

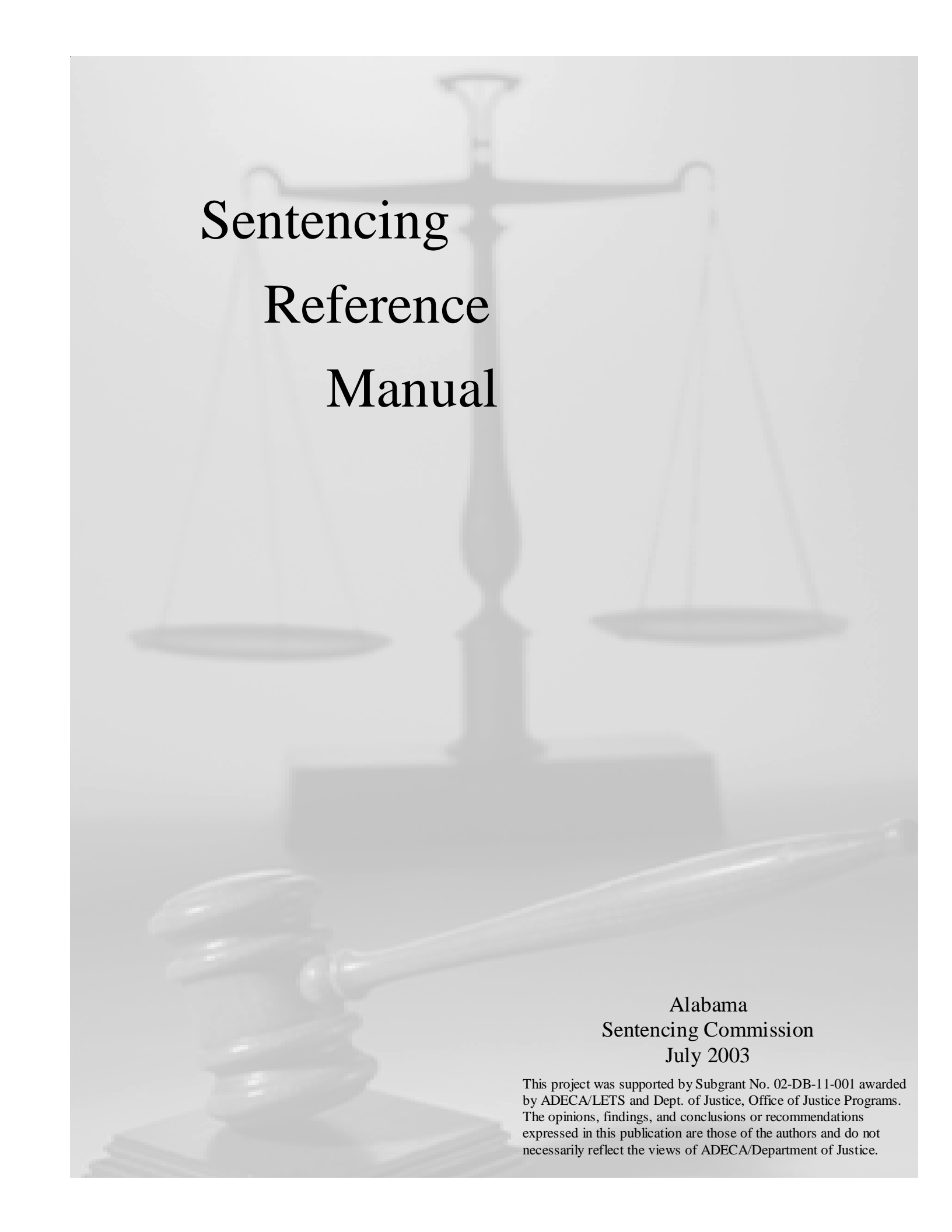
The background of the cover features a pair of scales of justice and a wooden gavel. The scales are positioned in the upper half, and the gavel is in the lower half, resting on a stack of books. The entire image has a greenish tint.

Sentencing Reference Manual

Alabama
Sentencing Commission
July 2003

MISSION STATEMENT

The Alabama Sentencing Commission shall work to establish and maintain an effective, fair, and efficient sentencing system for Alabama that enhances public safety, provides truth-in-sentencing, avoids unwarranted disparity, retains meaningful judicial discretion, recognizes the most efficient and effective use of correctional resources, and provides a meaningful array of sentencing options.



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PREFACE

The Alabama Sentencing Commission is committed to ensuring that trial judges retain meaningful judicial discretion and have at their disposal sufficient information regarding the offense and the offender, as well as statewide sentencing practices on similar offenders, essential for informed sentencing decisions. This sentencing reference manual is the Commission's first endeavor to provide judges with our analysis of sentencing practices, based on a four-year cohort of felony offenders, of the "Top 25" most frequent offenses of conviction, along with simple explanations of the application of parole and good time.

This year the Alabama Sentencing Commission achieved its first goals with the enactment of the state's first sentencing reform package. The reform bills attack Alabama's prison overcrowding and antiquated sentencing system from three directions – the theft bill, raising the value amounts for theft and property crimes; the Community Punishment and Corrections Act of 2003; and the Sentencing Reform Act of 2003. The three bills, now signed into law by the governor, redefine felony theft; increase accountability of, and support for, the initiation and continuation of community corrections programs for alternative sentencing; and establish timelines for the implementation of structured sentencing and truth-in-sentencing in Alabama.

Act No. 2003-354, entitled "The Sentencing Reform Act of 2003," requires the Sentencing Commission to draft a structured sentencing program for Alabama consisting of *voluntary, non-appealable* sentencing standards. The program will be implemented over a 3-year period. Beginning in 2004, the Commission will submit the first set of voluntary sentencing standards (or guidelines) for legislative approval. These standards will be constructed based on historical time-imposed patterns with adjustments to reflect current sentencing policy. The Sentencing Commission is collecting final data for drafting these standards and worksheets. The legislation also sets 2006 as the goal for submitting a second set of standards or guidelines to the Legislature. This second set of guidelines is necessary to implement truth-in-sentencing in Alabama, and if approved by the Legislature will become effective October 1, 2006. We hope that you will continue to support this legislation and the efforts of the Sentencing Commission to bring true sentencing reform to Alabama.

Table of Contents

	Page #
I. General Provisions	1
II. Statewide Sentencing Practices – Cases and Special Penalty Provisions	11
III. Alternative Sentencing	79
IV. Parole/Good time	87
V. Cases	93
VI. Interesting Facts	105
VII. Contacts	109

*“[R]ational and consistent
sentencing decisions
cannot be achieved without
a reliable information base
that provides the sentencing
court with both an accurate and
a relatively uniform volume
of information about all offenders.”*

Comment to ABA standards for
Criminal Justice, Sentencing
Alternatives and Procedures 18-5.1
(2d ed. 1986)

Chapter 1: General Provisions

Principles of Sentencing

“The sentence imposed in each case should call for the least restrictive sanction that is consistent with the protection of the public and the gravity of the crime. In determining the sentence, the court should evaluate the crime and its consequences, as well as the background and record of the defendant and give serious consideration to the goal of sentencing equality and the need to avoid unwarranted disparities.

Judges should be sensitive to the impact their sentences have on all components of the criminal justice system and should consider alternatives to long-term institutional confinement or incarceration in cases involving offenders whom the court deems to pose no serious danger to society.” Rule 26.8 Alabama Rules of Criminal Procedure.

Alabama General Penalty Provisions and Enhancements

I. Defined by Felony Class

Current Offense	Penalty	Minimum Penalty if Firearm/Deadly Weapon Used/Attempted
Class A Felony	10-99 years or life in state penitentiary. Fine up to \$20,000.	20 years.
Class B Felony	2-20 years imprisonment*. Fine up to \$10,000.	10 years.
Class C Felony	1 (+1 day) - 10 years imprisonment*. Fine up to \$5,000.	10 years.

* Imprisonment of 3 years or less can be ordered to be served in the county jail or penitentiary. Section §15-18-1(b) *Code of Alabama* 1975.

II. Enhancements for Prior Felony Conviction History (Application of §13A-5-9, Habitual Felony Offender Act).

Current Offense	No Prior Felony Convictions	One Prior Felony Conviction	Two Prior Felony Convictions	Three+ Prior Felony Convictions
Class A Felony	10-99 years or life in state penitentiary. Fine up to \$20,000.	15-99 years or life in state penitentiary. Fine up to \$20,000.	Life imprisonment or any term of years not less than 99 years. Fine up to \$20,000.	<i>No prior Class A Felony convictions:</i> Mandatory imprisonment for life or life imprisonment without possibility of parole. Fine up to \$20,000. <i>One or more prior Class A Felony convictions:</i> Mandatory imprisonment for life without possibility of parole. Fine up to \$20,000.
Class B Felony	2-20 years imprisonment*. Fine up to \$10,000.	10-99 years or life in state penitentiary. Fine up to \$20,000.	15-99 years or life in state penitentiary. Fine up to \$20,000.	Minimum of not less than 20 years or life imprisonment. Fine up to \$20,000.
Class C Felony	1 (+1 day) - 10 years imprisonment*. Fine up to \$5,000.	2-20 years in state penitentiary. Fine up to \$10,000.	10-99 years or life in state penitentiary. Fine up to \$20,000.	15-99 years or life in state penitentiary. Fine up to \$20,000.

* Imprisonment of 3 years or less can be ordered to be served in the county jail or penitentiary. Section §15-18-1(b) *Code of Alabama* 1975.

III. Crime Victim Assessment and Restitution

Victim Restitution

In any case in which a defendant is convicted of criminal activity resulting in pecuniary damages or loss to a victim, the court is required to conduct a restitution hearing and order the defendant to “make restitution or otherwise compensate such victim for any pecuniary damages.” Section 15-18-67, *Code of Alabama* 1975. In determining the manner, method or amount of restitution to be ordered, the court is encouraged to take into consideration:

- (1) The financial resources of the defendant and the victim and the burden that the manner or method of restitution will impose upon the victim or the defendant;
- (2) The ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;
- (3) The anticipated rehabilitative effect on the defendant regarding the manner of restitution or the method of payment;
- (4) Any burden or hardship upon the victim as a direct or indirect result of the defendant’s criminal acts;
- (5) The mental, physical and financial well being of the victim.” Section 15-18-68, *Code of Alabama* 1975

Mandatory Crime Victim Compensation Assessment

Pursuant to Section 15-23-17, *Code of Alabama* 1975, a victim compensation fee in the amount of not less than \$50 and no more than \$10,000 shall be assessed against any person convicted or pleading guilty to a felony and “[i]n imposing this penalty, the court shall consider factors such as the severity of the crime, the prior criminal record, and the ability of the defendant to pay, as well as the economic impact of the victim compensation assessment on the dependents of the defendant.” Section 15-23-17(b), *Code of Alabama* 1975.

IV. Enhancements for Specific Offenses

Statute	Offense	Enhancement
§13A-5-6	Firearm Enhancements (General)	Class A: Minimum 20 years Class B or C: Minimum 10 years
§13A-11-60	Possession & sale of brass or steel teflon-coated handgun ammunition	Additional consecutive punishment of 3 years in the penitentiary.
§13A-5-13	Hate Crimes	Class A: 15 years Class B: 10 years Class C: 2 years
§13A-6-130	Domestic Violence 1st Degree -- 2nd and subsequent	1 year without possibility of probation, parole, or good time. If committed in violation of a protection order: Minimum doubled without possibility of probation, parole, or good time.
§13A-6-131	Domestic Violence 2nd Degree -- 2nd and subsequent	6 months without possibility of probation, parole, or good time. If committed in violation of a protection order: Minimum doubled without possibility of probation, parole, or good time.
§13A-10-152	Terrorism	Murder: Death Class A other than murder: Life without parole Class B: Class A (10-99 years/life) Class C: Class B (2-20 years)
§32A-5A-191	Felony DUI	One year and one day, or 10 days if enrolled and completes an approved chemical dependency program.
§32A-5A-191(n)	DUI with passenger under 14 years of age	Double minimum punishment.
§13A-8-51(2)	Pharmacy Robbery	Hard labor for not less than 10 years and not eligible for parole, probation, or suspension of sentence.
§13A-6-130	Enticing a child to enter a vehicle, house, etc. for immoral purposes-- 2nd and subsequent	6 months without possibility of probation, parole, or good time.
§15-22-27	Repeat felony offender of serious physical injury offenses -- subsequent conviction of murder, rape, robbery, or assault with a deadly weapon (or attempts) resulting in serious physical injury.	No possibility of parole.
§13A-12-215	Selling, furnishing controlled substance to child (under 18)	Class A Felony (10-99 yrs/life.). Cannot be suspended or probated.
§13A-12-250	Drug sale within 3 mile radius of school**	Additional 5 years imprisonment.
§13A-12-270	Drug sale within 3 mile radius of housing project**	Additional 5 years imprisonment.
§13A-12-233	Drug trafficking enterprise	1st conviction: 25 yrs. min. up to & inc. life w/o parole and fine of no less than \$50,000 nor more than \$500,000. 2nd conviction: mandatory term of life w/o parole and fine not less than \$150,000 nor more than \$1 million.
§13A-12-231(13)	Drug trafficking while in possession of firearm***	Additional 5 years not subject to suspension or probation & mandatory \$25,000 fine.
§13A-12-231	Trafficking Cannabis: In excess of one kilo or 2.2 pounds but less than 100 pounds	Minimum 3 years and \$25,000 fine.
§13A-12-231	Trafficking Cannabis: In excess of 100 pounds but less than 500 pounds	Minimum 5 years and \$50,000 fine.
§13A-12-231	Trafficking Cannabis: In excess of 500 pounds but less than 1,000 pounds	Minimum 15 years and \$200,000 fine.
§13A-12-231	Trafficking Cannabis: In excess of 1,000 pounds	Life imprisonment without parole
§13A-12-231	Trafficking Opium, Herion & Lysergic Acid Diethylamide: 4 grams or more but less than 14 grams	Minimum 3 years and \$50,000 fine.
§13A-12-231	Trafficking Opium, Herion & Lysergic Acid Diethylamide: 14 grams or more but less than 28 grams	Minimum 10 years and \$100,000 fine.
§13A-12-231	Trafficking Opium, Herion & Lysergic Acid Diethylamide: 28 grams or more but less than 56 grams	Minimum 25 years and \$500,000 fine.
§13A-12-231	Trafficking Opium, Herion & Lysergic Acid Diethylamide: 56 grams or more	Life imprisonment without parole.

** See *Soles v. State*, 820 So.2d 163 (Ala. Crim. App. 2001), holding that the newly amended split sentencing statute allows a trial court to suspend a sentence imposed pursuant to §13A-12-250 or §13A-12-270.

*** See *Carter v. State*, 812 So. 2d 391 (Ala. Crim. App. 2001), holding that the \$25,000 fine provided for in §13A-12-231(13) for possession of a firearm during a drug trafficking offense is mandatory.

IV. Enhancements for Specific Offenses (cont.)

Statute	Offense	Enhancement
§13A-12-231	Trafficking Phencyclidine or mixture: 4 grams or more, but less than 14 grams	Minimum 3 years and \$50,000 fine.
§13A-12-231	Trafficking Phencyclidine or mixture: 14 grams or more, but less than 28 grams	Minimum 10 years and \$100,000 fine.
§13A-12-231	Trafficking Phencyclidine or mixture: 284 grams or more, but less than 56 grams	Minimum 25 years and \$500,000 fine.
§13A-12-231	Trafficking Phencyclidine or mixture: 56 grams or more	Life imprisonment without parole.
§13A-12-231	Trafficking Methaqualone: 1,000 but less than 5,000 pills	Minimum 3 years and \$50,000 fine.
§13A-12-231	Trafficking Methaqualone: 5,000 but less than 25,000 pills	Minimum 10 years and \$100,000 fine.
§13A-12-231	Trafficking Methaqualone: 25,000 but less than 100,000 pills	Minimum 25 years and \$500,000 fine.
§13A-12-231	Trafficking Methaqualone: 100,000 or more pills	Life imprisonment without parole.
§13A-12-231	Trafficking Hydromorphone: 500 but less than 1,000 pills	Minimum 3 years and \$50,000 fine.
§13A-12-231	Trafficking Hydromorphone: 1,000 but less than 4,000 pills	Minimum 10 years and \$100,000 fine.
§13A-12-231	Trafficking Hydromorphone: 4,000 but less than 10,000 pills	Minimum 25 years and \$500,000 fine.
§13A-12-231	Trafficking Hydromorphone: 10,000 or more pills	Life imprisonment without parole.
§13A-12-231	Trafficking cocaine or mixture, methylenedioxy amphetamine or mixture, methoxy ethylenedioxy amphetamine or mixture, amphetamine or mixture, methamphetamine or mixture: 28 grams but less than 500 grams	Minimum 3 years and \$50,000 fine.
§13A-12-231	Trafficking cocaine or mixture, methylenedioxy amphetamine or mixture, methoxy ethylenedioxy amphetamine or mixture, amphetamine or mixture, methamphetamine or mixture: 500 grams but less than one kilo	Minimum 10 years and \$100,000 fine.
§13A-12-231	Trafficking cocaine or mixture, methylenedioxy amphetamine or mixture, methoxy ethylenedioxy amphetamine or mixture, amphetamine or mixture, methamphetamine or mixture: one kilo but less than 10 kilos	Minimum 25 years and \$500,000 fine.
§13A-12-231	Trafficking cocaine or mixture, methylenedioxy amphetamine or mixture, methoxy ethylenedioxy amphetamine or mixture, amphetamine or mixture, methamphetamine or mixture: 10 kilos or more	Life imprisonment without parole.
§13A-12-231(12)	Habitual offenders convicted of drug trafficking	Sentence provided in drug statute or HFOA, whichever is greater
§13A-12-231(12)	Minimum mandatory sentence for drug trafficking exceptions	Mandatory minimum term of imprisonment prescribed under Drug Trafficking Act or 15 years, whichever is less. Reduction is authorized for a defendant sentenced to any term except life imprisonment without parole, if (s)he provides substantial assistance in the arrest or conviction of any accomplices, accessories, co-conspirators, or principals. Motion must be made by district attorney; a judge may not reduce or suspend a sentence <i>ex mero moto</i> .

VI. Retroactive Application of Habitual Felony Offender Act Amendment (HFOA) -- Summary of Events

The Habitual Felony Offender Act was amended by Act 2000-759, effective May 25, 2000, to provide that a person convicted of a Class A felony after three prior felony convictions, none of which were a Class A felony, could be sentenced to life imprisonment or life without parole (previously only life without parole). The sentencing options were also expanded for defendants with three prior felony convictions who are subsequently convicted of a Class B felony to include an imprisonment term of not less than 20 years or life imprisonment (prior law provided only for life imprisonment). This amendment was only to be applied prospectively.

In 2001, Act 2001-977 passed, providing that the sentencing judge or presiding judge was to apply the amendments retroactively “for consideration of early parole of each non-violent convicted offender based on evaluations performed by the Department of Corrections and approved by the Board of Pardons and Paroles and submitted to the court.” By Executive Order #62, Governor Siegelman ordered the Department of Corrections to establish a procedure for the evaluation of non-violent offenders and submit its proposal to the Attorney General and the Sentencing Commission for their recommendations and comments. Based on this Executive Order, implementation of Act 2001-977 could occur only after major issues were addressed and several procedural deficiencies filled in, i.e., the definition of non-violent offenders, a means for evaluating eligible offenders, filing procedures, jurisdiction for resentencing or the exercise of parole authority by the judiciary, etc.

After reviewing the proposed procedure recommended by the Department of Corrections and many attempts to develop a workable procedure for implementation of Act-2001-977 (and to particularly determine the role and authority the Legislature intended to grant to the trial courts and Board of Pardons and Paroles by the Act), the Sentencing Commission recommended that the Act’s constitutionality and interpretation were matters that should be addressed by the courts.

On March 7, 2003, in the case of *State v. Kirby*, CC 1989-252, the Circuit Court of Jackson County held Act 2001-977 unconstitutional on the grounds it constitutes an unlawful delegation of legislative power in violation of the separation of powers doctrine. In issuing its ruling, the Court invited the Legislature to revisit this issue utilizing the work done by the Department of Corrections and the Sentencing Commission on who should be considered violent and nonviolent offenders. This case is presently pending on application for rehearing before the Court of Criminal Appeals, Docket #021240. The Executive Order staying implementation has not been rescinded.

Multiple Sentences – Types of Service

The following types of sentences are utilized in Alabama:

Consecutive: Two or more sentences that are served at separate times, in sequence. One begins when the other ends. For example if a defendant receives consecutive sentences of 10 years and 5 years, the total amount of incarceration is 15 years.

Multiple sentences run consecutively, unless otherwise ordered. Rule 26.12 of the Alabama Rules of Criminal Procedures provides that “separate sentences of imprisonment imposed on a defendant for two or more offenses shall run consecutively, unless the judge at the time of sentencing directs otherwise, whether they are charged in the same charging instrument or by separate charging instruments.” The rule further provides that previously imposed consecutive sentences may be modified at any time to run concurrently by the court issuing a *nunc pro tunc* order.

Concurrent: Two or more sentences which are served at the same time, simultaneously. For example if a defendant is sentenced to serve concurrent sentences of 20 years and 5 years, the total imprisonment is 20 years. When a subsequent sentence is run concurrent with an existing sentence then the two sentences overlap, and would not necessarily end at the same time. Good time is computed on each case separately and the period of longest incarceration governs for establishing release date.

Coterminous: Sentence that ends at the same time as the one the defendant is now serving; a sentence that terminates upon completion of the inmate's other sentence. --The effect is to accord retroactive effect to a subsequent sentence, basically making the sentence run concurrent and commencing at a date prior to the time the sentence is imposed. For example, a defendant that has served 6 years of a 10 year sentence and is subsequently convicted and sentenced to another 5 years to be served "coterminous" with his current sentence, will complete both sentences in 4 years, because both sentences end at the same time. If the second sentence was concurrent, the two sentences would overlap and the defendant would be required to serve an additional year for a total of 5 years.¹

Place of Imprisonment

Imprisonment in Penitentiary or County Jails - § 15-18-1

Imprisonment or hard labor ***more than 12 months but not more than 3 years*** – judge may sentence to **confinement in the county jail, hard labor for the county** or imprisonment in the penitentiary.

Period of Imprisonment in penitentiary/hard labor for the county ***for more than 3 years*** – Imprisonment **must be in the penitentiary**.

Sentence Types

Punishment Generally

Section 15-18-1(a), *Code of Alabama* 1975 provides that "[t]he only legal punishments, besides removal from office and disqualification to hold office, are fines, hard labor for the county, imprisonment in the county jail, imprisonment in the penitentiary which includes hard labor for the state, and death § 15 -8-1.

Options Expanded

See "*Alternative Sentencing*" Chapter for more detailed discussion

Straight Probation

For any defendant whose punishment is fixed at 15 years or less,² the sentencing judge is authorized to suspend the execution of the sentence and place the defendant on probation or "impose a fine within the limits fixed by law and also place the defendant on probation." § 15-22-50, *Code of Alabama* 1975.

¹ Although "coterminous" sentences are not mentioned in the Code or Criminal Rules of Procedure, this type of sentence has been negotiated in plea agreements and imposed by some trial courts.

² Alabama's Split Sentence Act (§ 15-18-8) was amended in 2000 to apply to persons sentenced to more than 15 years but not more than 20 years imprisonment, with the authorized sentence of no less than 3 and nor more than 5 years confinement in a prison, jail-type institution or treatment institution, with the remainder of the sentence suspended. Section 15-22-50 relating to straight probation (with a maximum term of supervision for felony offenders 5 years), which excluded defendants sentenced to death or imprisonment in the penitentiary for more than 15 years was *not* amended and continues to include these restrictions.

5 Year Limitation for Felons

Although the court determines the period of probation or suspension of execution of the sentence, no defendant convicted of a felony may be placed on straight probation for a period exceeding five (5) years.

3-Year Limitation Applies to Youthful Offenders

Pursuant to § 15-19-6, the maximum period of probation that may be required of a defendant granted youthful offender status is three years. The Alabama Supreme Court has held that trial courts cannot impose consecutive probationary sentences that would contravene this limitation. *Ex parte Jackson*, 415 So.2d 1169 (Ala. 1994).

Split Sentence

A sentencing option that has gained increased support and is now commonly utilized by trial judges is Alabama's Split Sentence statute, § 15-8-8, *Code of Alabama 1975*. This statute may be utilized for any offender convicted and sentenced to a period of incarceration of 20 years or less, restricting the actual term of imprisonment as follows:

Sentence of **up to 15 years imprisonment**³ = **no more than 3 years actual confinement** (which is not subject to parole or good time deductions), with remainder of the sentence suspended.

Sentence of **greater than 15 but not more than 20 years imprisonment** = **not less than three but no more than five years confinement** (which is not subject to parole or good time deductions), with the remainder of the sentence suspended. (Applicable only for defendants sentenced on or after May 25, 2000, or whose sentence was not final in the trial court on May 25, 2000.)

Boot Camp

Pursuant to § 15-18-8(a)(2), trial courts may commit certain defendants sentenced under the Split Sentence Act to a disciplinary rehabilitation program (Boot Camp) under the operation of the Department of Corrections, after consultation with the Commissioner. Participation in this program is only for a certain time period (not less than 90 nor more than 180 days) and is governed by departmental rules and regulations.

Community Corrections and Punishment Act

Title 15, Chapter 18, Article 9, *Code of Alabama 1975*

Notwithstanding any law to the contrary, judges are authorized to sentence eligible offenders to appropriate community-based punishment programs either in conjunction with a split sentence, as an alternative to prison, or as a condition of probation. In sentencing offenders to any community-based alternative program, the court is authorized to set the duration of the sentence for the offense committed "to any period of time up to the maximum sentence within the appropriate range for the particular offense." § 15-18-175(d), *Code of Alabama 1975*.

The Community Punishment and Corrections Act of 1991, *as amended by Act 2003-353, effective 7/20/03*, (Sections 15-18-170 through 15-18-185, *Code of Alabama 1975*), provides for community-based punishment alternatives such as day reporting, home detention, electronic monitoring, half-way houses, restitution programs, community service, education and intervention programs and in-patient and out-patient substance abuse treatment programs.

³ In prison, jail-type institution, or treatment institution.

Procedures Relating to Sentencing -- Alabama Criminal Rules

Presentence Investigation (PSI) Reports - Felonies

A written report of a presentence investigation may be required in any case in which the court has discretion over the penalty to be imposed or authority to suspend execution of the sentence. For felony offenses, a presentence report shall be required upon written motion made by either party or on motion of the court. When required, the defendant is not to be sentenced until the presentence investigation (PSI) Report has been presented to and considered by the court.

Prior to the sentencing hearing, copies of the PSI Report must be furnished to the court, the district attorney, the defense attorney or, when not represented by counsel, the defendant. *Rule 26.3, Alabama Rules of Criminal Procedure.*

PSI Reports are not public records. *Rule 26.5(c) Alabama Rules of Criminal Procedure*

Pronouncement of Judgment and Sentence

Although the 26.2 Rules of Criminal Procedure expresses a preference that judgment of guilt and sentence be pronounced at the same time, interpreting its predecessor temporary procedural rule, the Court of Criminal Appeals held that simultaneous in-court pronouncement of judgment and sentence are not required. *Edwards v. State*, 505 So.2d 1297 (Ala.Crim.App. 1987).

Sentence Hearing

For felony offenses, the court must conduct a sentence hearing and pronounce sentence. The only instances in which a hearing may be avoided are (1) when the court has no discretion as to the penalty to be imposed and no power to suspend execution of the sentence, or (2) when a hearing is waived by the parties with the consent of the court.

When Held: After determination of guilt or continued by the court to a later date. If a PSI is required, the sentence hearing cannot be held until copies have been made available or furnished to the court and parties.

Evidence: Can be presented by defendant and State on any issue the court deems probative on the issue of sentence, i.e., nature and circumstances of offense; defendant's character, background, mental and physical condition, or history; financial gain to the defendant; loss suffered by the victim(s), or any aggravating or mitigating factor. The court determines the probative value of evidence and admissibility, Rules of Evidence do not govern.

BOP: Disputed facts are determined by the "preponderance of evidence" standard.

HFOA: If a hearing is necessary to establish prior convictions, the State is required to give reasonable notice to defendant and assumes the burden of proof to show prior convictions. In determining disputed facts, "beyond a reasonable doubt" standard of proof applies. Convictions from other jurisdictions can be used for enhancement if the offense would have been a felony under Alabama

law on or after Jan. 1, 1980. Federal crimes are considered a felony conviction if punishable by imprisonment in excess of one year under federal law, even if not punishable under Alabama law.

Rule 26.6 Alabama Rules of Criminal Procedure.

Pronouncement of Judgment and Sentence

Judgment must be announced in open court and must reflect the plea, verdict, findings, if any, and the adjudication. Before sentence is imposed, the defendant must be given an opportunity to make a statement in his or her own behalf. The right to **allocution** applies regardless of the gravity of the sentence imposed. *Davis v. State*, 747 So.2d 921 (Ala.Crim.App. 1999). In addition, the court must explain **pre-trial credit**, i.e., state that the defendant will be allowed credit on his or her sentence for any time he/she has been incarcerated on the present charge, explain the **terms of the sentence**, and notify defendant of his/her **right to appeal**.

Minute Entries: The clerk is required to keep a case action summary sheet in each case, noting the proceedings and actions, along with their dates. The case action summary is considered the official minutes of the case and certified copies are admissible to prove prior convictions. *Rule 26.9 Alabama Rules of Criminal Procedure.*

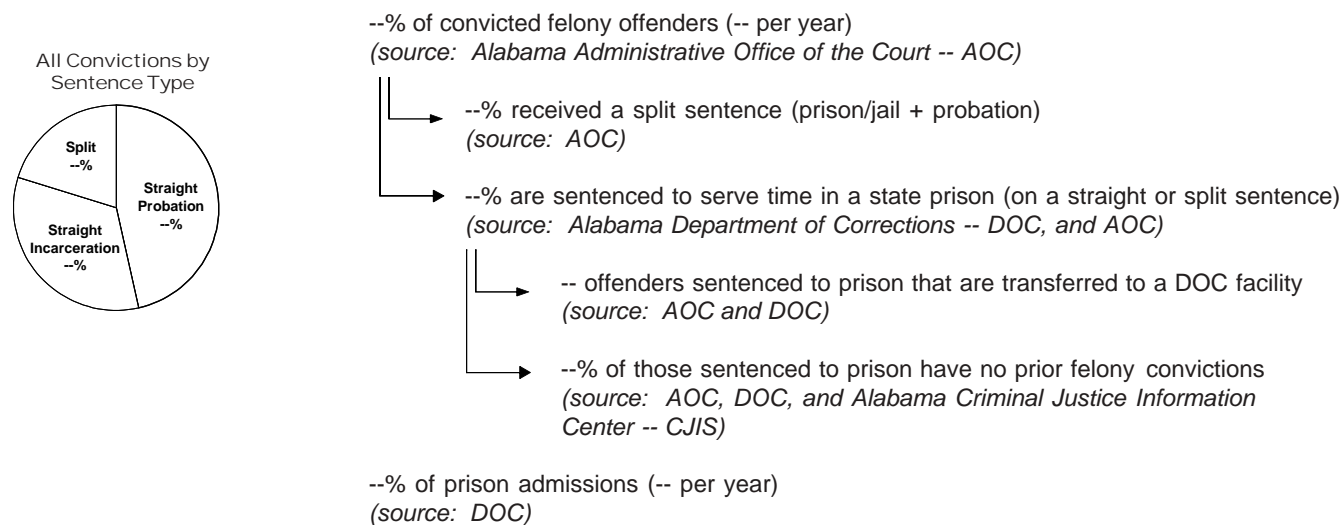
Chapter 2: Statewide Sentencing Practices

This chapter provides detailed information on the sentencing practices for the 25 most frequent felony offenses committed by Alabama convicted offenders during the most recent four years (FY1999-FY2002). Nine out of ten convicted felons handled by the Alabama judicial system committed one of these 25 crimes. The following example will describe the data displayed in this report.

Sample Crime

Felony Class and Statute

The lead section of each page provides information on the sentences received by convicted Alabama offenders for the specified crime. The pie chart shows the percentage of convicted offenders who were sentenced to straight probation, straight incarceration, and a split sentence (prison/jail + probation). A straight incarceration sentence includes either a prison or jail sentence (jail accounts for roughly 1% of the incarceration slice). Bullet #1 shows the average number of persons convicted of the specified crime per year, as well as the percentage these offenders represent of the total number of felony offenders in Alabama. Bullet #2 shows the percentage of offenders convicted for the specified crime that received a split sentence (jail/prison + probation). Bullet #3 indicates the percentage of convicted offenders sentenced to serve time in a state prison (either as a straight or split sentence). This percentage only represents those sentenced to a state prison, it does not include those sentenced to jail. Bullet #4 shows the percentage of persons sentenced to prison (does not include jail) that were transferred to a DOC facility. Bullet #5 indicates the percentage of persons sentenced to prison (does not include jail) that have no prior felony convictions. The last bullet displays the total number of persons admitted to prison who were convicted of this crime, as well as the percentage of the total population of prison admissions that they make up (prisoners may not be admitted to prison the same year they were convicted).



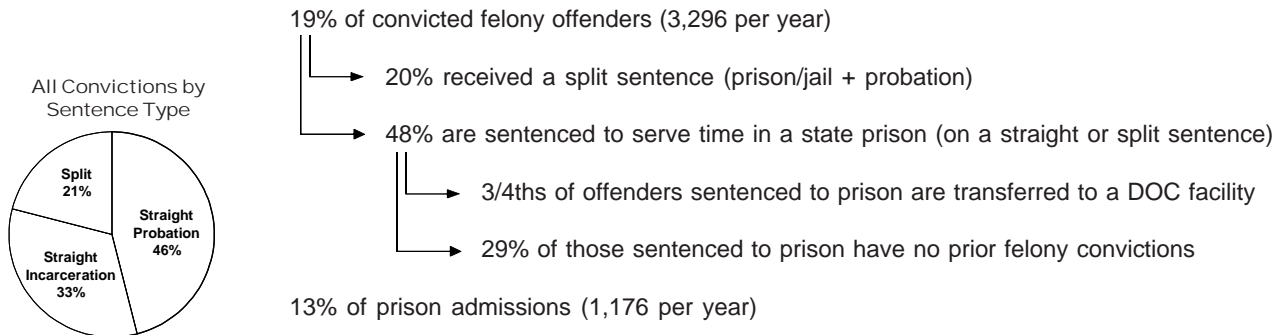
Following the bullets are two tables. The first table displays data for those convicted of only a *single count/single conviction* of the selected offense. The upper portion of the table shows the distribution of the three sentence types (straight probation, split, and straight incarceration) by the number of prior felony convictions for the offender population (none, one, two, three or more). Displayed next is the sentence length in months for those who received a straight probation sentence (midpoint, most frequent sentence in months, and the range -- range reflects the “middle 50%” of offenders as defined by the 25th and 75th percentiles) by the number of prior felony convictions. Next is the same information for those that were given a split sentence, and is divided out by sentence length in months for both the probation and jail/prison portion of the sentence. Lastly, the chart shows the sentence length in months for

those who received a straight incarceration sentence (midpoint, most frequent, and range). All of the data in this table was gathered from Alabama Administrative Office of the Court, and Alabama Criminal Justice Information Center databases.

The second table provides the same data as the preceding table, but depicts information for those who were convicted of *multiple counts* of the selected offense. The data in this table was gathered from Alabama Administrative Office of the Courts, and Alabama Criminal Justice Information Center databases.

For each of the top 25 crimes, there is also a section listing cases and special penalty provisions. For six crimes [Possession or Receipt of Controlled Substances (Schedule I-V), Theft of Property 2nd Degree, Felony DUI, Theft of Property 1st Degree, Receiving Stolen Property 2nd Degree, Receiving Stolen Property 1st Degree] an additional page of data is provided. The data is pertinent to each offense and comes from Alabama Office of the Courts and pre-sentence investigation reports.

#1: Possession or Receipt of Controlled Substances (Schedule I-V) Class C Felony §13A-12-212



FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense Single Count

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	60%	39%	28%	22%
	Split	16%	21%	24%	33%
	Straight Incarceration	24%	40%	48%	45%
Straight Probation:	Sentence Length in Months*				
	Midpoint	24	24	24	36
	Most Frequent	36	24	36	24
	Range	24-36	24-36	24-36	24-51
Split Sentence:	Sentence Length in Months*				
	<i>Probation</i>	Midpoint	36	36	48
		Most Frequent	36	60	60
		Range	36-60	24-60	24-60
	<i>Jail/Prison</i>	Midpoint	7	12	18
		Most Frequent	4	4	12
		Range	4-18	6-24	6-24
	Straight Incarceration:	Sentence Length in Months*			
		Midpoint	36	36	48
		Most Frequent	36	36	24
		Range	18-48	24-60	24-120

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).
Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#1: Possession or Receipt of Controlled Substances (Schedule I-V)

Class C Felony §13A-12-212

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	49%	34%	21%**	9%**
	Split	19%	24%	25%	29%
	Straight Incarceration	32%	42%	54%	62%
Straight Probation:	Sentence Length in Months*				
	Midpoint	36	36	57**	24**
	Most Frequent	36	60	60**	24**
	Range	24-48	24-60	36-60**	14-54**
Split Sentence:	Sentence Length in Months*				
<i>Probation</i>	Midpoint	48	48	48	60
	Most Frequent	60	60	60	60
	Range	32-60	36-60	24-60	36-60
<i>Jail/Prison</i>	Midpoint	12	18	15	24
	Most Frequent	4	4	36	24
	Range	6-18	6-24	11-36	12-36
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	48	60	72	132
	Most Frequent	36	36	180	180
	Range	36-60	36-120	45-129	48-180

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#1: Possession or Receipt of Controlled Substances (Schedule I-V)

Class C Felony §13A-12-212

Drug Type

Cocaine	54%	→ 23% of offenders have more than 1 type of drug
Marijuana	18%	
Meth/Amphetamine	15%	
Other	13%	
	100%	

Drug Amount

	Cocaine	Marijuana	Meth.	Other
< 1 gram	64%	9%	39%	33%
1-28 grams	30%	79%	46%	67%
28-255 grams	5%	4%	11%	
255+ grams	1%	8%	4%	
	100%	100%	100%	100%

Possession of Weapon

No	90%	→ 89% of weapons are guns
Yes	10%	

History of Abuse

	Alcohol	Drugs
No	59%	20%
Yes	41%	80%

History of Treatment

	Alcohol	Drugs
No	87%	72%
Yes	13%	28%

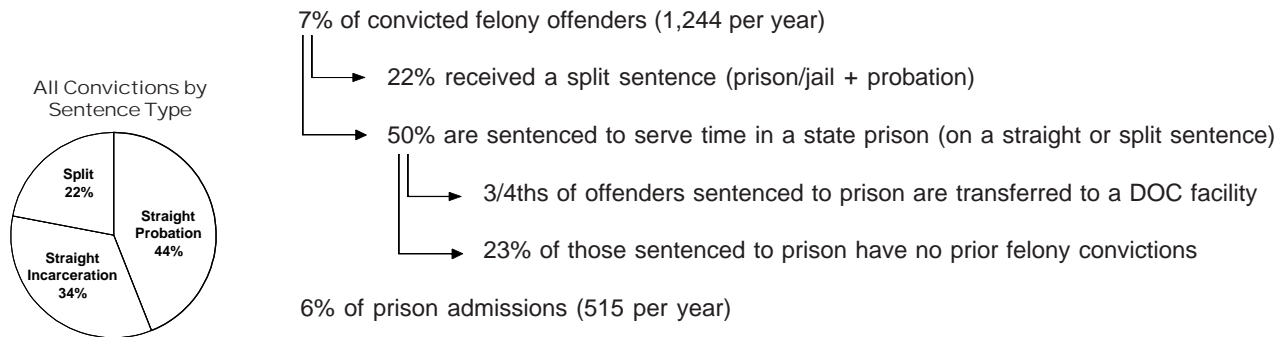
Special Penalty Provisions

Forensic Services Fee – Pursuant to § 36-18-7, *Code of Alabama* 1975, a mandatory \$100 assessment applies to all convictions for drug possession, drug sale, drug trafficking and drug paraphernalia offenses. This assessment is in addition to all fines, fees, costs and punishments prescribed by law.

Demand Reduction Assessment – A mandatory additional penalty of \$1000 for first offenders and \$2,000 for repeat offenders applies to defendants convicted of unlawful possession or receipt of a controlled substance, unlawful distribution of a controlled substance, unlawful possession of marijuana in the 1st degree, criminal solicitation, attempt or conspiracy to commit a controlled substance crime, sale or furnishing a controlled substance to a minor and drug trafficking.

#2: Theft of Property 2nd Degree

Class C Felony § 13A-8-4

FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense
Single Count

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	64%	41%	18%	16%
	Split	14%	22%	29%	36%
	Straight Incarceration	22%	37%	53%	48%
Straight Probation:	Sentence Length in Months*				
	Midpoint	24	24	36	36
	Most Frequent	24	24	36	36
	Range	24-36	24-36	24-60	24-36
Split Sentence:	Sentence Length in Months*				
	Midpoint	36	36	36	60
	Most Frequent	36	60	60	60
	Range	24-48	30-60	36-60	36-60
Jail/Prison	Midpoint	8	15	18	24
	Most Frequent	6	6	24	24
	Range	6-20	7-24	9-24	12-36
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	36	36	60	180
	Most Frequent	36	24	24	180
	Range	24-36	24-84	24-120	60-180

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#2: Theft of Property 2nd Degree

Class C Felony § 13A-8-4

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	62%	30%**	4%**	10%**
	Split	14%**	29%**	44%**	36%
	Straight Incarceration	24%	41%	52%**	54%
Straight Probation:	Sentence Length in Months*				
	Midpoint	36	36**	36**	60**
	Most Frequent	36	36**	36**	60**
	Range	24-36	24-48**	36-36**	24-60**
Split Sentence:	Sentence Length in Months*				
	<i>Probation</i>	Midpoint	48**	36**	60**
		Most Frequent	60**	24**	60
		Range	30-60**	24-36**	36-60
	<i>Jail/Prison</i>	Midpoint	6**	24**	18**
		Most Frequent	6**	24**	6**
		Range	6-12**	11-33**	6-30**
	Straight Incarceration:	Sentence Length in Months*			
		Midpoint	48	60	36**
		Most Frequent	36	180	24**
		Range	36-72	36-180	24-120**

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#2: Theft of Property 2nd Degree

Class C Felony § 13A-8-4

Dollar Value of Stolen Items

Up to \$1,000	71%
\$1,000-\$1,500	9%
\$1,500-\$2,000	6%
\$2,000-\$2,500	2%
\$2,500-\$5,000	7%
>\$5,000	5%
	100%

Items Taken

Cash	18%
Checks	6%
Credit/Debit Card	6%
Motor Vehicle	6%
Livestock	<1%
Firearm	4%
Electronics	12%
Unknown	3%
Other	45%
	100%

→ Clothing accounted for 29% of the "other" category

Possession of Weapon

No	95%
Yes	5%

History of Abuse

	<u>Alcohol</u>	<u>Drugs</u>
No	71%	44%
Yes	29%	56%

History of Treatment

	<u>Alcohol</u>	<u>Drugs</u>
No	89%	80%
Yes	11%	20%

#2: Theft of Property 2nd Degree
Class C Felony § 13A-8-4

Cases and Special Penalty Provisions

Repeat offenders: For defendants with prior convictions of theft in the first or second degree, the property value is lowered and includes property over \$100.00 and up to \$1,000.00 in value (\$250 to \$2,500 as of 9/1/2003).

NEW PROVISIONS EFFECTIVE SEPTEMBER 1, 2003

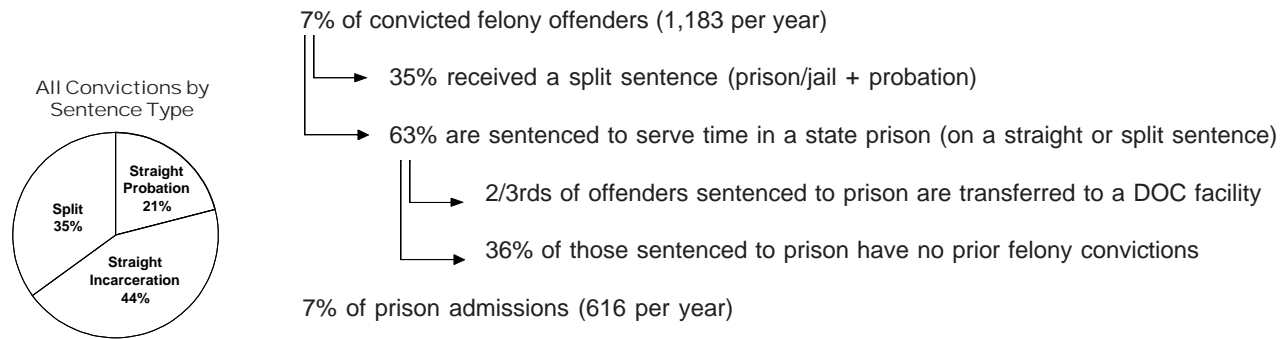
Act 2003-355, effective 9/1/03, amended § 13-8-4 to increase the value of property not taken from the person of another to property valued over \$500 but not exceeding \$2,500. For repeat offenders, the value amount of the property stolen was increased from \$100 - \$1,000 to \$250 - \$2,500 and the scope of this provision has been extended to include prior convictions of receiving stolen property in the 1st or 2nd degrees.

Consecutive Sentences Not Authorized for Convictions of Burglary and Theft Arising out of Same Transaction: Although a defendant can be convicted of both burglary and theft where the crimes arose from the same transaction, the defendant may only receive one punishment. *Ex parte McKelvey*, 630 So.2d 56 (Ala. 1992). *See also, Brown v. State*, 821 So.2d 219,225 (Ala.Crim.App. 2000), in which the Court of Criminal Appeals held that a defendant convicted for burglary and theft arising from the same transaction could be sentenced for both if the sentences are made concurrent, rather than consecutive.

The McKelvey opinion has been restricted as applying only to “kindred crimes,” which trial courts must determine from analyzing the statutes involved. *Ex parte Dixon*, 804 So.2d 1075, 1080 (Ala. 2000). The Court of Criminal Appeals has held that *McKelvey* is inapplicable to cases involving robbery and burglary, rape and burglary, or sodomy and burglary. *Dawson v. State*, 675 So.2d 897, 902(Ala.Crim.App. 1995).

#3: Felony DUI

Class C Felony § 32-5A-191

FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense
Single Count

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	27%	11%	8%	7%
	Split	42%	36%	32%	25%
	Straight Incarceration	31%	53%	60%	68%
Straight Probation:	Sentence Length in Months*				
	Midpoint	36	36	36	36
	Most Frequent	36	36	36	36
	Range	24-60	24-60	24-60	24-48
Split Sentence:	Sentence Length in Months*				
	<i>Probation</i>	Midpoint	36	36	48
		Most Frequent	36	60	60
		Range	24-60	36-60	36-60
	<i>Jail/Prison</i>	Midpoint	6	12	12
		Most Frequent	12	12	12
		Range	4-12	6-13	5-12
	<i>Jail/Prison</i>	Midpoint	6	12	12
		Most Frequent	12	12	12
		Range	4-12	6-13	5-12
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	36	36	48	60
	Most Frequent	36	36	36	60
	Range	18-60	24-60	36-60	36-65

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#3: Felony DUI

Class C Felony § 32-5A-191

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	24%	14%**	8%**	5%**
	Split	33%	32%	27%**	23%**
	Straight Incarceration	43%	54%	65%	72%
Straight Probation:	Sentence Length in Months*				
	Midpoint	36	36**	30**	30**
	Most Frequent	60	36**	24**	24**
	Range	11-60	9-51**	18-39**	24-36**
Split Sentence:	Sentence Length in Months*				
	<i>Probation</i>				
	Midpoint	36	36	48**	48**
	Most Frequent	60	24	60**	60**
	Range	24-60	24-60	36-60**	36-60**
	<i>Jail/Prison</i>				
	Midpoint	10	12**	12**	18**
	Most Frequent	12	12**	12**	12**
	Range	6-12	5-18**	8-20**	12-36**
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	48	60	60	60
	Most Frequent	36	60	60	108
	Range	36-60	36-72	36-72	36-108

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).
Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#3: Felony DUI

Class C Felony § 32-5A-191

**Under the Influence
of:**

Alcohol	95%
Drugs	1%
Both	4%
	<hr/>
	100%

Possession of:

Weapon	1%
Alcohol	87%
Drugs	12%
	<hr/>
	100%

History of Abuse

	Alcohol	Drugs
No	<1%	62%
Yes	100%	38%

History of Treatment

	Alcohol	Drugs
No	47%	81%
Yes	53%	19%

#3: Felony DUI
Class C Felony § 32-5A-191

Cases and Special Penalty Provisions

SPECIFIED PENALTIES

Fine of not less than \$4,100 but not more than \$10,100 *and*

Imprisonment of not less than one year and one day nor more than 10 years

“The minimum sentence may be suspended or probated if the defendant enrolls and successfully completes a state certified chemical dependency program recommended by the court referral officer and approved by the sentencing court. Where probation is granted, the sentencing court may, in its discretion, and where monitoring equipment is available, place the defendant on house arrest under electronic surveillance during the probationary term.” § 32-5A-191(h), *Code of Alabama* 1975.

Imprisonment may include confinement in the county jail and hard labor for the county if the sentence does not exceed three years. § 32-5A-191(h), *Code of Alabama* 1975.

Upon conviction, the defendant’s driver’s license will be revoked for five years by the Department of Public Safety.

HFOA INAPPLICABLE

The Habitual Felony Offender Act does not apply to Felony DUI. § 32-5A-191(h), *Adamson v. State*, 779 So.2d 1286 (Ala.Crim. App. 2000).

ENHANCEMENT BASED ON PRIOR DUI CONVICTIONS

Enhanced felony sentence applies only upon proof that present conviction is the driver’s fourth and subsequent DUI conviction.

Felony penalty provision in Alabama’s DUI statute is not a separate substantive offense, but rather, a sentence enhancing provision. *Ex parte Parker*, 740 So.2d 432 (Ala. 1999), on remand 740 So.2d 435.

If no jail time is imposed, prior uncounseled DUI conviction can be used for enhancement purposes. *State v. Thrasher*, 783 So.2d 103 (Ala. 2000), cited with approval in *Bolan v. State*, 2003 WL 21246581 (Ala.Crim.App. May 30, 2003)

Out-of state convictions may not be used for enhancement purposes. A prior DUI conviction must be pursuant to Alabama’s DUI statute. *Ex parte Bertram*, 2003 WL 857934 9 (Ala. 3/7/03)

Prior conviction under Alabama’s DUI statute for driver’s under 21 years of age, (subsection (b) of § 32-5A-191) can be used to enhance sentence upon subsequent conviction. *Casaday v. State*, 828 So.2d 960 (Ala. Crim. App. 2002).

The “within five years” provision of DUI statute § 32-5A-191 (previously applicable to all convictions but now applicable only to second DUI convictions) means that the date of conviction, rather than the date of the offense or the arrest, controls for enhancement purposes. Although this provision has now been revoked for defendants convicted of their third or subsequent DUI, any offender convicted before the statute was revoked (10/1/97) is still subject to the “5 years” provision. *Dutton v. State*, 807 So.2d 596 (Ala.Crim.App. 2001).

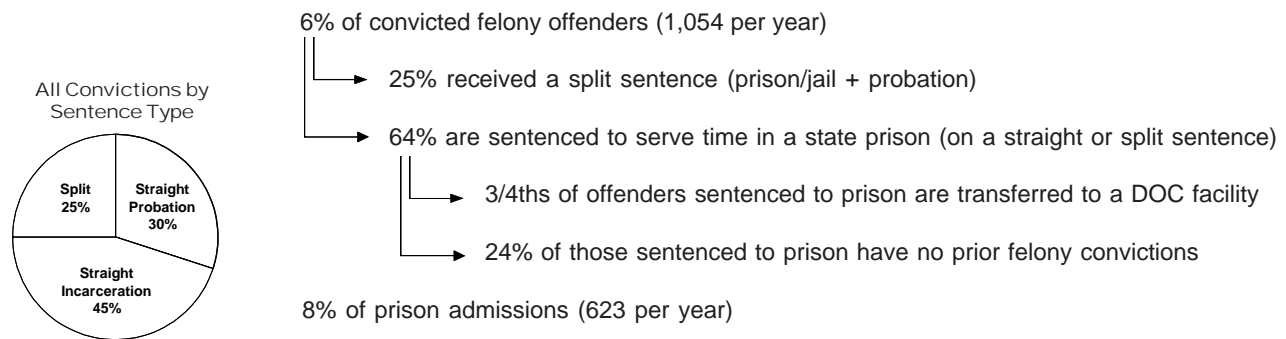
JURISDICTION

The circuit court has jurisdiction over the offense of felony DUI. *Davis v. State*, 806 So.2d 404 (Ala.Crim. App. 2001).

In a felony DUI case, the Supreme Court held that where 30 days had elapsed since original sentencing and the defendant voluntarily withdrew his new trial motion, the trial court lacked jurisdiction to modify the sentence on its own motion. *Ex parte Hitt*, 778 So.2d 159 (Ala. 2000)

#4: Burglary 3rd Degree

Class C Felony § 13A-7-7

FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense
Single Count

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	48%	26%	15%	6%
	Split	23%	25%	28%	36%
	Straight Incarceration	29%	49%	57%	58%
Straight Probation:	Sentence Length in Months*				
	Midpoint	36	36	36	24
	Most Frequent	36	36	60	24
	Range	24-36	24-36	24-60	24-60
Split Sentence:	Sentence Length in Months*				
	Probation	Midpoint	36	58	60
		Most Frequent	36	60	60
		Range	36-60	36-60	36-60
	Jail/Prison	Midpoint	12	12	12
		Most Frequent	6	6	12
		Range	6-24	6-24	9-24
	Sentence Length in Months*				
Straight Incarceration:	Midpoint	36	60	60	180
	Most Frequent	36	36	120	180
	Range	24-60	36-120	36-120	120-180

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#4: Burglary 3rd Degree

Class C Felony § 13A-7-7

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions				
		None	One	Two	Three or more	
All Sentences:	Distribution of Sentence Types					
	Straight Probation	35%	21%**	13%**	6%**	
	Split	26%	27%	21%**	23%	
	Straight Incarceration	39%	52%	66%	71%	
Straight Probation:	Sentence Length in Months*					
	Midpoint	36	36**	36**	60**	
	Most Frequent	36	36**	24**	60**	
	Range	36-60	36-48**	24-54**	36-60**	
Split Sentence:	Sentence Length in Months*					
	Probation	Midpoint	42	60	54**	60
		Most Frequent	60	60	36**	60
		Range	36-60	36-60	36-60**	36-90
	Jail/Prison	Midpoint	12	22	24**	24
		Most Frequent	6	6	36**	24
		Range	6-24	9-36	11-36**	20-36
	Straight Incarceration:	Sentence Length in Months*				
		Midpoint	60	120	72	180
		Most Frequent	60	120	36	180
Range		36-72	48-180	36-120	120-180	

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

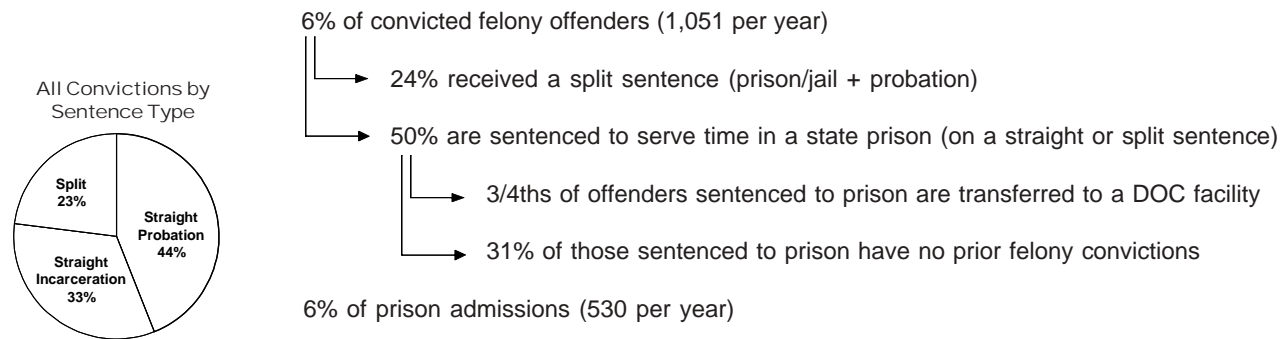
Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

See discussion supra, "#2 Theft of Property 2nd Degree," regarding burglary and theft as kindred crimes for double jeopardy purposes and only one punishment can be imposed for convictions arising from the same transaction.

#5: Theft of Property 1st Degree

Class B Felony § 13A-8-3

FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense
Single Count

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	61%	36%	20%	10%
	Split	17%	26%	33%	36%
	Straight Incarceration	22%	38%	47%	54%
Straight Probation:	Sentence Length in Months*				
	Midpoint	36	36	36	36
	Most Frequent	36	36	60	36
	Range	24-60	24-60	24-60	12-42
Split Sentence:	Sentence Length in Months*				
	<i>Probation</i>	Midpoint	36	48	60
		Most Frequent	60	60	60
		Range	36-60	36-60	36-60
	<i>Jail/Prison</i>	Midpoint	12	18	24
		Most Frequent	6	36	36
		Range	6-24	9-36	12-36
	Sentence Length in Months*				
	Midpoint	36	60	84	120
	Most Frequent	36	60	120	180
	Range	24-60	36-120	36-120	60-180

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#5: Theft of Property 1st Degree

Class B Felony § 13A-8-3

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	50%	25%**	9%**	8%**
	Split	23%	42%	29%**	45%**
	Straight Incarceration	27%	33%	62%**	47%**
Straight Probation:	Sentence Length in Months*				
	Midpoint	36	36**	48**	48**
	Most Frequent	36	36**	36**	36**
	Range	24-60	21-42**		
Split Sentence:	Sentence Length in Months*				
	<i>Probation</i>	Midpoint	48	60	60**
		Most Frequent	60	36	60**
		Range	36-60	36-60	51-60**
	<i>Jail/Prison</i>	Midpoint	12	24	36**
		Most Frequent	6	36	36**
		Range	7-36	7-36	20-36**
	Straight Incarceration:	Sentence Length in Months*			
		Midpoint	60	120	84**
		Most Frequent	60	120	36**
		Range	36-72	60-180	42-132**

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#5: Theft of Property 1st Degree

Class B Felony § 13A-8-3

Dollar Value of Stolen Items

Up to \$1,000	14%
\$1,000-\$1,500	15%
\$1,500-\$2,000	10%
\$2,000-\$2,500	5%
\$2,500-\$5,000	27%
>\$5,000	29%
	100%

Items Taken

Cash	20%
Checks	9%
Credit/Debit Card	3%
Motor Vehicle	21%
Livestock	<1%
Firearm	2%
Electronics	13%
Unknown	2%
Other	30%
	100%

Jewelry accounted for 21% of the "other" category

Possession of Weapon

No	97%
Yes	3%

History of Abuse

	Alcohol	Drugs
No	77%	55%
Yes	23%	45%

History of Treatment

	Alcohol	Drugs
No	92%	84%
Yes	8%	16%

NEW PROVISIONS EFFECTIVE SEPTEMBER 1, 2003

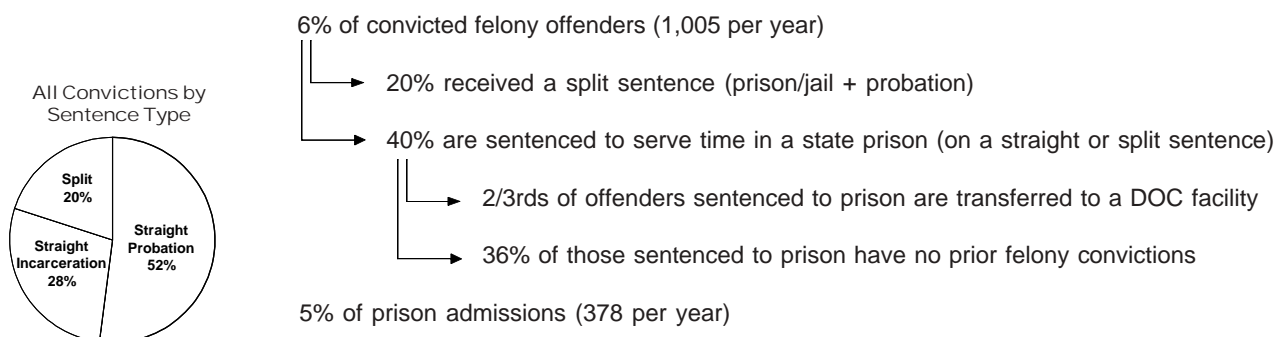
Act 2003-355, effective 9/1/03, amended § 13-8-3 to increase the value of property not taken from the person of another to property which exceeds \$2,500 in value.

See discussion of *McKelvey* opinion supra, “#2 Theft of Property 2nd Degree” holding that only concurrent sentences are authorized for convictions of burglary and theft arising out of the same transaction.

Remand was required for the trial court to address the merits of the defendant’s ineffective assistance of counsel claim, where he was informed that the minimum authorized punishment was life imprisonment, when the actual punishment authorized under the HFOA, as amended effective 5/25/2000, was a term of 20 years or life imprisonment. *Schartau v. State*, 2003 WL 1949802 (Ala. Crim. App. 2003).

#6: Possess Marijuana 1st Degree

Class C Felony § 13A-12-213



FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense Single Count

		# of Prior Felony Convictions				
		None	One	Two	Three or more	
All Sentences:	Distribution of Sentence Types					
	Straight Probation	62%	43%	26%	20%	
	Split	19%	20%	27%	30%	
	Straight Incarceration	19%	37%	47%	50%	
Straight Probation:	Sentence Length in Months*					
	Midpoint	36	36	36	36	
	Most Frequent	36	36	36	60	
	Range	24-36	24-36	24-48	24-60	
Split Sentence:	Sentence Length in Months*					
	Probation	Midpoint	36	48	48	60
		Most Frequent	36	60	60	60
		Range	24-60	30-60	36-60	36-60
	Jail/Prison	Midpoint	6	12	12	18
		Most Frequent	6	6	12	36
		Range	3-14	6-24	6-24	12-36
	Straight Incarceration:	Sentence Length in Months*				
		Midpoint	24	36	48	120
		Most Frequent	36	36	24	180
		Range	12-36	24-60	24-96	36-180

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#6: Possess Marijuana 1st Degree

Class C Felony § 13A-12-213

FY1999-2002 Statewide Sentencing Practices for
Multiple Counts

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	57%	27%**	29%**	25%**
	Split	13%**	27%**	29%**	10%**
	Straight Incarceration	30%	46%**	42%**	65%**
Straight Probation:	Sentence Length in Months*				
	Midpoint	36	24**	42**	36**
	Most Frequent	36	36**	60**	36**
	Range	24-36	18-36**	21-60**	24-60**
Split Sentence:	Sentence Length in Months*				
<i>Probation</i>	Midpoint	36**	60**	36**	42**
	Most Frequent	36**	60**	36**	24**
	Range	21-42**	36-96**	29-44**	
<i>Jail/Prison</i>	Midpoint	21**	24**	6**	36**
	Most Frequent	12**	12**	6**	36**
	Range	12-36**	12-24**	4-14**	36-36**
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	36	48**	60**	120**
	Most Frequent	36	36**	12**	180**
	Range	12-84	36-72**	24-102**	66-180**

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#6: Possess Marijuana 1st Degree

Class C Felony § 13A-12-213

Cases and Special Penalty Provisions

Forensic Services Fee – Pursuant to § 36-18-7, *Code of Alabama* 1975, a mandatory \$100 assessment applies to all convictions for drug possession, drug sale, drug trafficking and drug paraphernalia offenses. This assessment is in addition to all fines, fees, costs and punishments prescribed by law.

Demand Reduction Assessment – A mandatory additional penalty of \$1,000 for first offenders and \$2,000 for repeat offenders applies to defendants convicted of unlawful possession or receipt of a controlled substance, unlawful distribution of a controlled substance, unlawful possession of marijuana in the 1st degree, criminal solicitation, attempt or conspiracy to commit a controlled substance crime, sale or furnishing a controlled substance to a minor and drug trafficking.

Cases

The Demand Reduction Act, § 13A-12-281(a), *Code of Alabama* 1975, (prescribing a mandatory \$1,000 penalty for first offenders and a \$2,000 penalty for second and subsequent offenders), applies to convictions for possession of marijuana in the first degree, but not to possession of marijuana in the second degree. *Freeman v. State*, 839 So. 2d 681 (Ala.Crim.App. 2002).

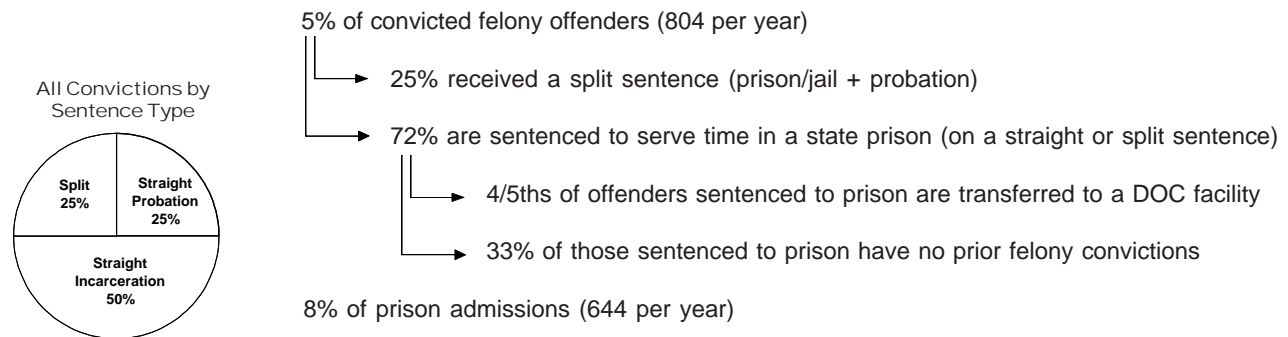
Possession of Marijuana is a separate offense from the unlawful possession of controlled substances defined in § 13A-12-212. *English v. State*, 603 So.2d 1128 (Ala.Crim.App. 1992); *Straughn v. State*, 2003 WL 564625 (Ala.Crim.App. 2003).

Possession of marijuana was held not to be a lesser included offense of trafficking, where there was no evidence that the appellant possessed 2.2 pounds or less of marijuana. *Insley v. State*, 591 So. 2d 589 (Ala.Crim.App. 1991). However, there may be cases in which possession is a lesser offense of trafficking. *Willingham v. State*, 796 So.2d 440,444 (Ala.Crim.App. 2001).

See also, Sears v. State, 479 So.2d 1308, at 1312 n.2 in which the Court noted that where “the offenses of possession and trafficking stem from possession of the same controlled substance the two offenses are not separate offenses, but rather, the offense of possession is a lesser offense included in the offense of trafficking.”

#7: Unlawful Distribution of Controlled Substances

Class B Felony § 13A-12-211

FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense
Single Count

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	34%	11%	6%**	4%**
	Split	28%	27%	29%	28%
	Straight Incarceration	38%	62%	65%	68%
Straight Probation:	Sentence Length in Months*				
	Midpoint	36	36	54**	60**
	Most Frequent	36	36	60**	60**
	Range	24-60	24-60	27-60**	30-60**
Split Sentence:	Sentence Length in Months*				
	<i>Probation</i>				
	Midpoint	48	60	60	54
	Most Frequent	60	60	60	60
	<i>Jail/Prison</i>				
	Midpoint	12	24	36	36
	Most Frequent	12	12	36	36
	Range	12-24	12-60	18-66	30-72
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	84	120	120	180
	Most Frequent	60	120	120	240
	Range	60-144	84-144	84-180	120-240

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#7: Unlawful Distribution of Controlled Substances

Class B Felony § 13A-12-211

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	25%	11%**	7%**	1%**
	Split	30%	25%	23%**	32%
	Straight Incarceration	45%	64%	70%	67%
Straight Probation:	Sentence Length in Months*				
	Midpoint	36	42**	60**	24**
	Most Frequent	60	60**	60**	24**
	Range	24-60	27-60**	30-60**	24-24**
Split Sentence:	Sentence Length in Months*				
	<i>Probation</i>				
	Midpoint	36	60	60**	60
	Most Frequent	36	60	60**	60
<i>Probation</i>	Range	36-60	36-69	36-60**	33-60
	<i>Jail/Prison</i>				
	Midpoint	21	36	36**	60
	Most Frequent	12	36	36**	36
Straight Incarceration:	Range	12-36	23-60	29-120**	36-156
	Sentence Length in Months*				
	Midpoint	120	120	144	168
	Most Frequent	120	120	120	240
	Range	69-144	102-180	120-240	120-240

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#7: Unlawful Distribution of Controlled Substances

Class B Felony § 13A-12-211

Cases and Special Penalty Provisions

Offense is the unlawful selling, furnishing, giving away, delivering or distributing unlawfully, of a controlled substance enumerated in Schedules I through V.

Forensic Services Fee – Pursuant to § 36-18-7, *Code of Alabama* 1975, a mandatory \$100 assessment applies to all convictions for drug possession, drug sale, drug trafficking and drug paraphernalia offenses. This assessment is in addition to all fines, fees, costs and punishments prescribed by law.

Demand Reduction Assessment – A mandatory additional penalty of \$1,000 for first offenders and \$2,000 for repeat offenders applies to defendants convicted of unlawful possession or receipt of a controlled substance, unlawful distribution of a controlled substance, unlawful possession of marijuana in the 1st degree, criminal solicitation, attempt or conspiracy to commit a controlled substance crime, sale or furnishing a controlled substance to a minor and drug trafficking.

3-Mile Radius Enhancements –

Following amendment of Alabama's Split Sentencing statute (effective 5/25/01), a trial judge may suspend the 5-year enhancement provisions of § 13A-12-250 and § 13A-12-270 for the sale of drugs within 3 miles of a school or housing project, for any defendant sentenced to a term of imprisonment for 20 years or less. *Soles v. Alabama*, 2001 WL 1148130 (Ala.Crim. App. 2001).

Base sentence of 10 years for distribution of a controlled substance, plus two five-year enhancements for sale within 3 miles of a school and housing project held to be a single sentence of 20 years, not three separate sentences. *State v. Corley*, 831 So. 2nd 59 (Ala.Crim.App. 2001), Cert. Denied March 22, 2002.

The five year sentence enhancements of §§ 13A-12-250 and 13A-12-270, enhancement of sentences applicable to convictions for the unlawful sale of a controlled substance within three miles of a school or housing project, do not apply to convictions for “distribution” of a controlled substance unless it is found that the defendant sold or collaborated or associated with the seller to sell a controlled substance. Although the enhancement provisions do not apply to a defendant who is a buyer's agent (‘procuring agent’), it is applicable to a defendant who acts as a “seller's agent.” *Williams v. State*, 706 So.2d 821 (Ala.Crim.App. 1997).

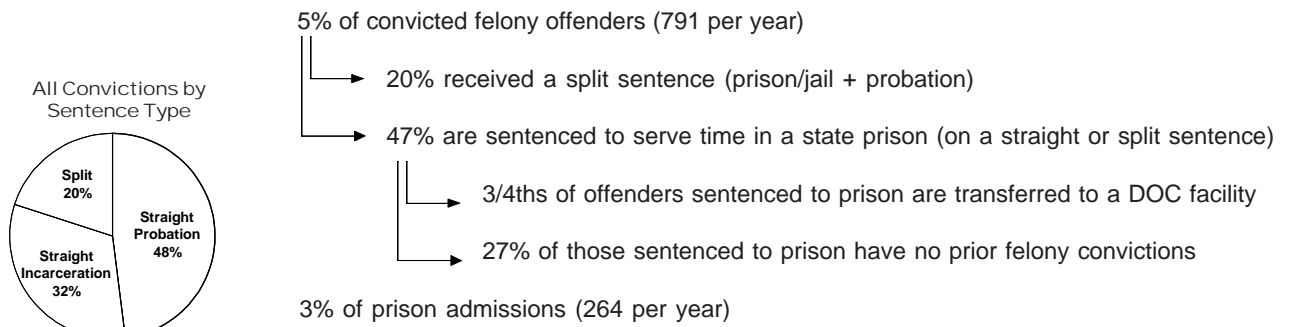
To support the enhancement of the appellant's sentence pursuant to § 13A-12-250, it is not necessary that the defendant personally accept payment for the controlled substance. The appellate courts have also noted that neither the trial court nor the jury is required to make a finding that the defendant's actions constituted a sale for § 13A-12-250 to apply, as long as the evidence supports such a finding. *Robinson v. State*, 747 So.2d 348, 350 Ala.Crim.App. 1999).

Location not included in the definition of the offense of distributing a controlled substance. Enhancements under § 13A-12-250 and § 13A-12-270 need not be included in the indictment. *Poole v. State*, 2001 WL 996300 (Ala.Crim.App. 2002); *See also, Hale v. State*, 2002 WL 31270284 (Ala. 2002).

Good Time - Base sentence, together with any enhancements must total less than 15 years imprisonment for an inmate to be eligible to earn ‘good time.’ *McCants v. State*, 823 So. 2d 1286 (Ala.Crim.App. 2001), *See also, State v. Corley*, 831 So.2d 59 (Ala. 2001) holding that sentence enhancements are part of the single original sentence to which they are added, and are not considered separate sentences.

#8: Possession Forged Instrument 2nd Degree

Class C Felony § 13A-9-6



FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense Single Count

		# of Prior Felony Convictions				
		None	One	Two	Three or more	
All Sentences:	Distribution of Sentence Types					
	Straight Probation	66%	38%	24%	14%	
	Split	13%	21%	32%	35%	
	Straight Incarceration	21%	41%	44%	51%	
Straight Probation:	Sentence Length in Months*					
	Midpoint	24	36	36	36	
	Most Frequent	24	36	36	60	
	Range	24-36	24-36	24-60	24-60	
Split Sentence:	Sentence Length in Months*					
	Probation	Midpoint	36	36	54	60
		Most Frequent	60	60	60	60
		Range	29-60	36-60	36-60	36-60
	Jail/Prison	Midpoint	9	12	18	24
		Most Frequent	9	9	36	12
		Range	9-18	9-36	12-36	12-36
	Straight Incarceration:	Sentence Length in Months*				
		Midpoint	36	36	36	180
		Most Frequent	36	24	24	180
		Range	21-36	24-60	24-60	60-180

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#8: Possession Forged Instrument 2nd Degree

Class C Felony § 13A-9-6

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	55%	32%	9%**	10%**
	Split	16%	27%	40%	37%
	Straight Incarceration	29%	41%	51%	53%
Straight Probation:	Sentence Length in Months*				
	Midpoint	36	36	42**	36**
	Most Frequent	36	36	60**	36**
	Range	24-60	24-60	21-60**	24-60**
Split Sentence:	Sentence Length in Months*				
	Probation				
	Midpoint	36	36	60	48
	Most Frequent	60	36	60	60
	Range	24-60	36-60	36-60	33-60
Jail/Prison	Midpoint	12	14	12	24
	Most Frequent	9	24	9	36
	Range	9-24	12-24	9-36	13-36
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	36	60	54	180
	Most Frequent	36	180	36	180
	Range	24-60	36-120	36-87	60-180

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#8: Possession Forged Instrument 2nd Degree
Class C Felony § 13A-9-6

Cases

Trial court's comments that a defendant who was convicted of 18 counts of criminal possession of a forged instrument in the second degree and received eighteen 30 year sentences should not be considered for parole were unwarranted. *Ex parte Johnson*, 603 So.2d 1016 (Ala.Crim. App. 1992).

The trial court erred in summarily dismissing appellant's Rule 32 petition challenging his sentence of four 17 year terms of imprisonment (to run concurrent) upon conviction for three counts of second-degree criminal possession of a forged instrument and one count of second degree theft of property. *Rogers v. State*, 728 So.2d 690 (Ala.Crim.App. 1998).

Defendant's 21-year sentence imposed under Alabama's Habitual Felony Offender Act for conviction of criminal possession of a forged instrument in the 2nd degree held not to constitute cruel and unusual punishment in violation of the Eighth Amendment. *Turner v. State*, 610 So.2d 1198 (Ala.Crim.App. 1992).

Imposition of life sentence for conviction of possession of a forged instrument in the 2nd degree, where defendant had three prior convictions for buying, receiving or concealing stolen property, grand larceny and false pretenses, was upheld against claim that it constituted cruel and unusual punishment. *McGee v. State*, 467 So.2d 685 (Ala.Crim.App. 1985).

The following sentences were held not to constitute cruel and unusual punishment in violation of the defendants' Eighth Amendment rights:

On her fourth conviction for possession of a forged instrument in the 2nd degree (a \$35 check), the defendant was sentenced to 15 years in prison as a habitual felony offender. This sentence was the result of a plea agreement in which 16 other counts were nolle prossed. *Taylor v. State*, 445 So.2d 1004 (Ala.Crim.App. 1984).

Thirty years imprisonment for conviction of possession of forged instrument in the second degree, with prior felony convictions of false pretense, falsely obtaining a controlled substance and two forgery convictions. *Taylor v. State*, 462 So.2d 1068 (Ala.Crim.App. 1985).

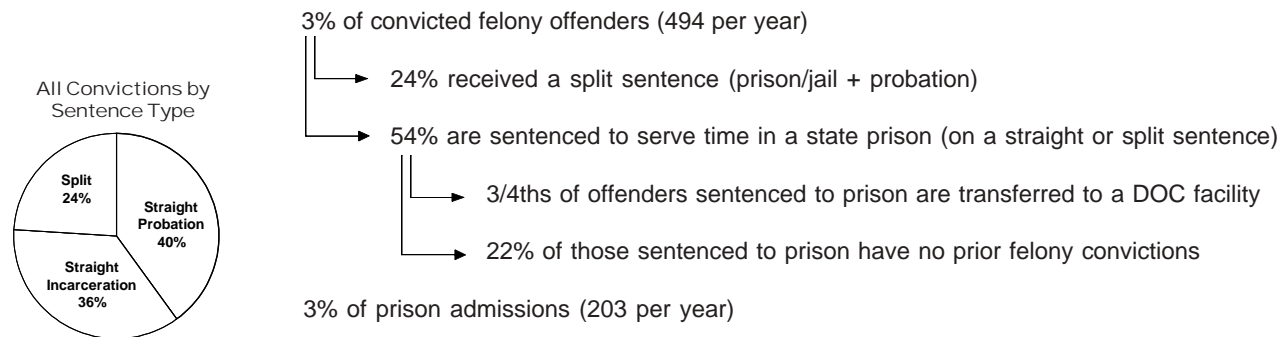
Life sentence with possibility of parole imposed on defendant with three prior felony convictions upon subsequent conviction of four counts of criminal possession of a forged instrument and three counts of forgery in the second degree. *Burke v. State*, 478 So.2d 6 (Ala.Crim.App. 1985).

Counterfeit currency falls within the definition of forged instrument. *F.C. v. State*, 742 So.2d 200 (Ala.Crim.App. 1999).

A bank withdrawal slip is capable of being a "forged instrument." *Brooks v. State*, 456 So.2d 1142 (Ala.Crim.App. 1984).

#9: Receiving Stolen Property 2nd Degree

Class C Felony § 13A-8-18

FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense
Single Count

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	62%	38%	21%	11%
	Split	17%	25%	26%	37%
	Straight Incarceration	21%	37%	53%	52%
Straight Probation:	Sentence Length in Months*				
	Midpoint	24	24	36	36
	Most Frequent	36	24	36	24
	Range	24-36	24-36	24-60	24-51
Split Sentence:	Sentence Length in Months*				
	Midpoint	36	36	36	60
	Most Frequent	60	60	60	60
	Range	24-60	36-60	30-60	36-60
Jail/Prison	Sentence Length in Months*				
	Midpoint	12	12	12	24
	Most Frequent	6	12	12	24
	Range	6-24	6-24	6-24	12-36
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	36	36	36	180
	Most Frequent	36	24	24	180
	Range	18-39	24-60	24-108	60-180

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#9: Receiving Stolen Property 2nd Degree

Class C Felony § 13A-8-18

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	57%	27%**	7%**	14%**
	Split	17%**	24%**	20%**	30%**
	Straight Incarceration	26%**	49%**	73%**	56%**
Straight Probation:	Sentence Length in Months*				
	Midpoint	36	36**	36**	60**
	Most Frequent	36	36**	36**	60**
	Range	24-60	30-60**	36-36**	42-60**
Split Sentence:	Sentence Length in Months*				
	<i>Probation</i>	Midpoint	36**	60**	156**
		Most Frequent	60**	60**	156**
		Range	30-60**	42-60**	60-60**
	<i>Jail/Prison</i>	Midpoint	12**	13**	24**
		Most Frequent	6**	6**	24**
		Range	6-22**	6-33**	24-24**
	Straight Incarceration:	Sentence Length in Months*			
		Midpoint	48**	54**	180**
		Most Frequent	36**	60**	180**
		Range	36-60**	36-60**	60-180**

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#9: Receiving Stolen Property 2nd Degree

Class C Felony § 13A-8-18

Dollar Value of Stolen Items

Up to \$1,000	67%
\$1,000-\$1,500	11%
\$1,500-\$2,000	4%
\$2,000-\$2,500	4%
\$2,500-\$5,000	9%
>\$5,000	5%
	100%

Items Taken

Cash	4%
Checks	2%
Credit/Debit Card	1%
Motor Vehicle	12%
Firearm	15%
Electronics	21%
Unknown	6%
Other	39%
	100%

Tools accounted for 30% of the "other" category

History of Abuse

	Alcohol	Drugs
No	64%	34%
Yes	36%	66%

History of Treatment

	Alcohol	Drugs
No	93%	83%
Yes	7%	17%

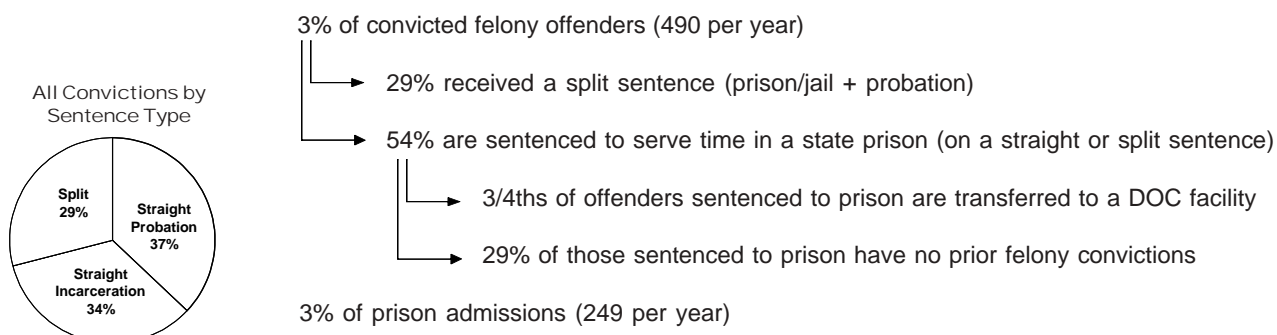
NEW PROVISIONS EFFECTIVE SEPTEMBER 1, 2003

Act 2003-355, effective 9/1/03, amended § 13-8-18, *Code of Alabama* 1975, to increase the value of property that is subject to the offense of "receiving stolen property," from property over \$100 to \$1,000 in value to property over \$500, but not exceeding \$2,500. A new provision was included for repeat offenders, similar to the provision now included in the theft of property 2nd degree, providing that the value shall be reduced to property valued between \$250 and \$2,500 for any defendant that has previously been convicted of theft of property in the first or second degree or receiving stolen property in the first or second degree.

To be convicted of the offense of "receiving stolen property" the property must actually be stolen property. *Ex parte Walls*, 711 So.2d 490 (Ala. 1997), rehearing denied.

#10: Assault 2nd Degree

Class C Felony § 13A-6-21



FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense Single Count

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	52%	28%	14%	14%
	Split	29%	29%	36%	34%
	Straight Incarceration	19%	43%	50%	52%
Straight Probation:	Sentence Length in Months*				
	Midpoint	36	36	36	39
	Most Frequent	36	60	60	60
	Range	24-60	24-60	24-60	24-60
Split Sentence:	Sentence Length in Months*				
	<i>Probation</i>	Midpoint	48	60	60
		Most Frequent	60	60	60
		Range	36-60	36-60	36-60
	<i>Jail/Prison</i>	Midpoint	12	12	14
		Most Frequent	6	12	6
		Range	6-24	9-24	9-24
	Straight Incarceration:	Midpoint	60	60	120
		Most Frequent	120	120	120
		Range	24-120	36-120	36-120

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#10: Assault 2nd Degree

Class C Felony § 13A-6-21

FY1999-2002 Statewide Sentencing Practices for
Multiple Counts

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	50%**	23%**	9%**	6%**
	Split	35%**	35%**	45%**	39%**
	Straight Incarceration	15%**	42%**	46%**	55%**
Straight Probation:	Sentence Length in Months*				
	Midpoint	36**		60**	60**
	Most Frequent	36**		60**	60**
	Range	24-60**		60-60**	60-60**
Split Sentence:	Sentence Length in Months*				
	<i>Probation</i>	Midpoint	54**	36**	60**
		Most Frequent	60**	24**	60**
		Range	36-60**	24-72**	60-60**
	<i>Jail/Prison</i>	Midpoint	12**	18**	36**
		Most Frequent	6**	12**	12**
		Range	6-24**	12-36**	12-39**
	Straight Incarceration:	Sentence Length in Months*			
		Midpoint	42**	36**	120**
		Most Frequent	24**	12**	120**
		Range	21-102**	24-120**	90-150**

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).**Range** reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#10: Assault 2nd Degree
Class C Felony § 13A-6-21

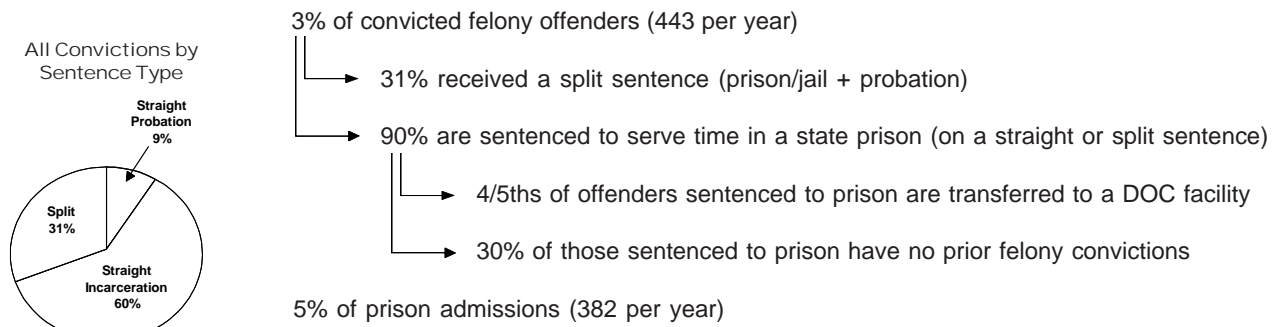
Cases

The mandatory minimum sentence of 10 years imprisonment under the firearm enhancement statute (§13A-5-6) is applicable upon conviction for assault in the second degree, even though an essential element of the offense is causing injury by means of a deadly weapon or a dangerous instrument. *Love v. State*, 681 So.2d 1108 (Ala.Crim.App. 1996).

The trial court lacked jurisdiction to amend original “co-terminus” sentence in second degree assault case, to run consecutively with another case, where 10 months had passed since the original sentence was imposed. In the absence of a motion for new trial or a request to modify a sentence filed within 30 days after sentencing, the trial court loses all jurisdiction to modify a defendant’s sentence at the end of the 30th day. In dicta, the Court noted that although Rule 26.12(c), Ala.R.Crim.P., does appear to give a trial court some leeway to amend a sentence order after the 30-day jurisdictional period has expired to “provide that previously imposed consecutive sentences run concurrently, Rule 26.12 does not authorize the trial court to amend a sentence order to change a concurrent sentence to a consecutive sentence.” *Moore v. State*, 814 So.2d 308 (Ala.Crim.App. 2001).

#11: Robbery 1st Degree

Class A Felony § 13A-8-41

FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense
Single Count

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	6%**	2%**	1%**	1%**
	Split	49%	41%	34%	18%
	Straight Incarceration	45%	57%	65%	81%
Straight Probation:	Sentence Length in Months*				
	Midpoint	48**	60**	36**	36**
	Most Frequent	60**	60**	36**	36**
	Range	33-60**	36-60**	36-36**	36-36**
Split Sentence:	Sentence Length in Months*				
	<i>Probation</i>				
	Midpoint	60	60	60	60
	Most Frequent	60	60	60	60
	Range	36-60	36-60	36-60	45-60
	<i>Jail/Prison</i>				
	Midpoint	36	36	36	36
	Most Frequent	36	36	60	36
	Range	36-48	36-48	24-60	36-50
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	240	240	240	240
	Most Frequent	240	240	240	240
	Range	240-264	240-240	240-264	240-300

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#11: Robbery 1st Degree

Class A Felony § 13A-8-41

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation		3%**		
	Split	44%	21%**	30%**	15%**
	Straight Incarceration	56%	76%	70%	85%
Straight Probation:	Sentence Length in Months*				
	Midpoint		48**		
	Most Frequent		36**		
	Range				
Split Sentence:	Sentence Length in Months*				
	<i>Probation</i>	Midpoint	60	42**	60**
		Most Frequent	60	36**	60**
		Range	48-60	36-60**	54-60**
	<i>Jail/Prison</i>	Midpoint	48	36**	48**
		Most Frequent	60	36**	60**
		Range	36-60	36-57**	36-60**
	Straight Incarceration:	Midpoint	240	240	240
		Most Frequent	240	240	240
		Range	240-300	240-258	240-252

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).
Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#11: Robbery 1st Degree

Class A Felony § 13A-8-41

Cases

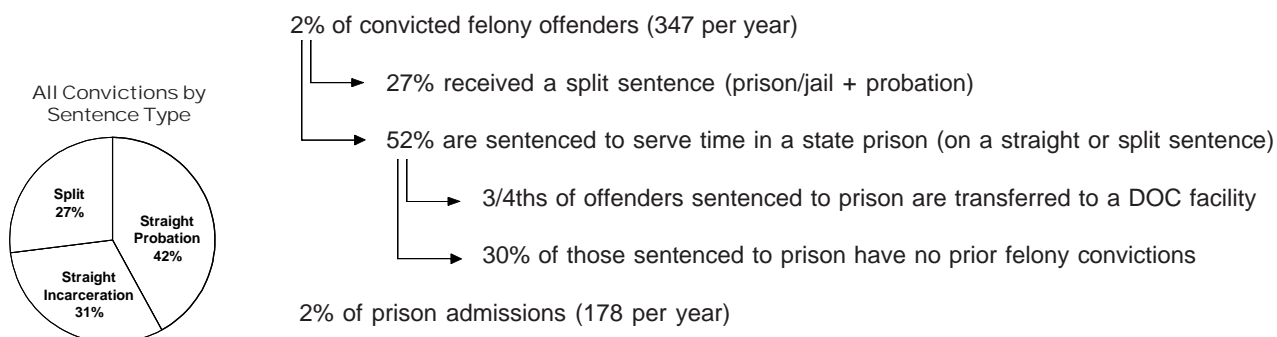
The defendant was convicted for first degree robbery and sentenced to “life imprisonment without parole,” applying the enhancement provisions of the Habitual Felony Offender Act based on six prior convictions of forgery for which he had received full pardons. The Alabama Supreme Court reversed, holding that a conviction for which a “full” pardon has been given cannot be used for sentence enhancement purposes under the Habitual Felony Offender Act. *Ex parte Casey*, 2002 WL 254110 (Ala. 2002).

Where the indictment charged robbery in the first degree and failed to allege the fact that another participant was present, which is an essential element of second degree robbery, the trial court lacked jurisdiction to accept the defendant’s guilty plea to robbery in the second degree. *Goetzman v. State*, 844 So.2d 1289 (2002).

Robbery in the first degree and burglary in the first degree arising from the same transaction are punishable as separate crimes, because each statute requires proof of an element that the other does not. Unlike the crimes of burglary and theft, robbery in the first degree and burglary in the first degree are not “kindred crimes” and a defendant may be convicted and sentenced under both statutes. *Ex parte Dixon*, 804 So.2d 1075 (Ala. 2000).

#12: Receiving Stolen Property 1st Degree

Class B Felony § 13A-8-17



FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense Single Count

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	57%	39%	17%**	9%**
	Split	19%	34%	33%	48%
	Straight Incarceration	24%	27%	50%	43%
Straight Probation:	Sentence Length in Months*				
	Midpoint	36	36	36**	30**
	Most Frequent	36	36	36**	24**
	Range	24-36	24-36	24-36**	24-39**
Split Sentence:	Sentence Length in Months*				
	Probation				
	Midpoint	36	48	36	60
	Most Frequent	36	60	36	60
	Range	36-60	36-60	36-60	36-60
	Jail/Prison				
	Midpoint	6	12	21	24
	Most Frequent	5	12	36	36
	Range	5-18	6-30	10-36	12-36
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	36	48	36	120
	Most Frequent	24	24	24	180
	Range	24-60	24-120	24-120	36-180

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#12: Receiving Stolen Property 1st Degree

Class B Felony § 13A-8-17

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	48%**	25%**	33%**	
	Split	23%**	30%**	33%**	40%**
	Straight Incarceration	29%**	45%**	34%**	60%**
Straight Probation:	Sentence Length in Months*				
	Midpoint	36**	60**	48**	
	Most Frequent	24**	60**	12**	
	Range	24-48**	30-60**		
Split Sentence:	Sentence Length in Months*				
<i>Probation</i>	Midpoint	60**	30**	60**	42**
	Most Frequent	60**	36**	60**	36**
	Range	26-60**	12-39**	60-60**	33-60**
<i>Jail/Prison</i>	Midpoint	6**	24**	18**	24**
	Most Frequent	6**	24**	6**	24**
	Range	5-6**	12-30**		18-36**
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	36**	60**	180**	120**
	Most Frequent	24**	120**	180**	180**
	Range	24-93**	36-120**		60-180**

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#12: Receiving Stolen Property 1st Degree

Class B Felony § 13A-8-17

Dollar Value of Stolen Items

Up to \$1,000	10%
\$1,000-\$1,500	15%
\$1,500-\$2,000	12%
\$2,000-\$2,500	7%
\$2,500-\$5,000	23%
>\$5,000	33%
	100%

Items Taken

Cash	3%
Checks	<1%
Credit/Debit Card	<1%
Motor Vehicle	47%
Firearm	5%
Electronics	13%
Unknown	4%
Other	27%
	100%

→ Jewelry accounted for 20% of the "other" category

History of Abuse

	Alcohol	Drugs
No	68%	44%
Yes	32%	56%

History of Treatment

	Alcohol	Drugs
No	93%	84%
Yes	7%	16%

NEW PROVISIONS EFFECTIVE SEPTEMBER 1, 2003

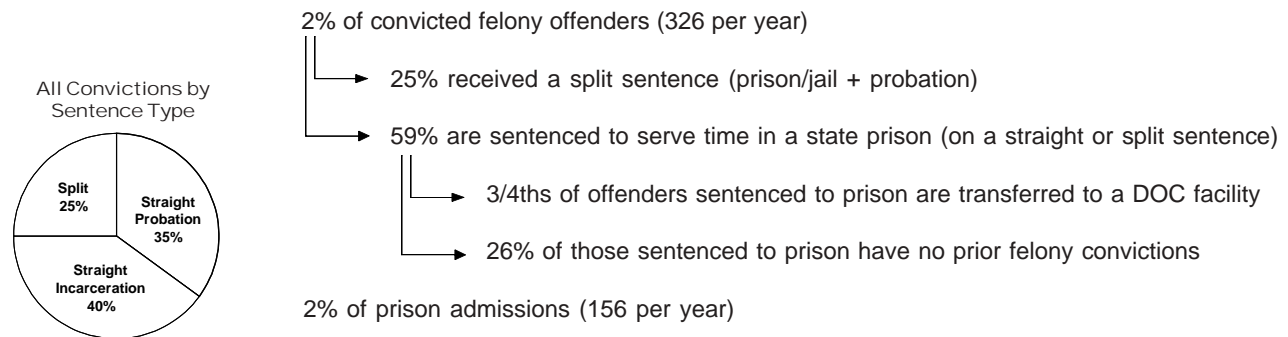
Act 2003-355, effective 9/1/03, amended § 13-8-17, *Code of Alabama* 1975, to increase the value of property that is subject to the offense of "receiving stolen property in the first degree," from property over \$1,000.00 to property over \$2,500.00 in value.

A person who steals property may be convicted of receiving that same stolen property, under § 13A-8-16, *Ala. Code* 1975, if the evidence shows that he disposed of the property. *Smith v. State*, 739 So.2d 545 (Ala.Crim.App. 1999).

To be convicted of the offense of "receiving stolen property" the property must actually be stolen property. *Ex parte Walls*, 711 So.2d 490 Ala. 1997), rehearing denied.

#13: Unauthorized Use Of/Breaking & Entering A Vehicle

Class C Felony § 13A-8-11

FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense
Single Count

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	43%	30%	13%**	13%
	Split	24%	26%	34%	32%
	Straight Incarceration	33%	44%	53%	55%
Straight Probation:	Sentence Length in Months*				
	Midpoint	36	36	36**	36
	Most Frequent	36	24	36**	36
	Range	24-36	24-36	36-60**	20-36
Split Sentence:	Sentence Length in Months*				
	<i>Probation</i>	Midpoint	36	48	60
		Most Frequent	36	60	60
		Range	24-60	24-60	45-60
	<i>Jail/Prison</i>	Midpoint	6	12	12
		Most Frequent	6	6	18
		Range	6-18	6-23	6-18
	Straight Incarceration:	Midpoint	36	36	48
		Most Frequent	36	24	24
		Range	12-36	24-60	30-120

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#13: Unauthorized Use Of/Breaking & Entering A Vehicle

Class C Felony § 13A-8-11

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions				
		None	One	Two	Three or more	
All Sentences:	Distribution of Sentence Types					
	Straight Probation	48%	26%**	26%**	10%**	
	Split	25%**	31%**	32%**	36%**	
	Straight Incarceration	27%**	43%**	42%**	54%	
Straight Probation:	Sentence Length in Months*					
	Midpoint	36	36**	36**	48**	
	Most Frequent	36	36**	24**	60**	
	Range	24-36	24-36**	24-48**	18-60**	
Split Sentence:	Sentence Length in Months*					
	Probation	Midpoint	54**	36**	54**	60**
		Most Frequent	60**	36**	60**	60**
		Range	24-60**	24-60**	33-60**	36-60**
	Jail/Prison	Midpoint	8**	24**	6**	33**
		Most Frequent	18**	36**	6**	36**
		Range	6-18**	10-36**	6-18**	12-36**
	Straight Incarceration:	Sentence Length in Months*				
		Midpoint	48**	60**	54**	120
		Most Frequent	36**	60**	36**	180
		Range	30-72**	48-120**	36-69**	60-180

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).
Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

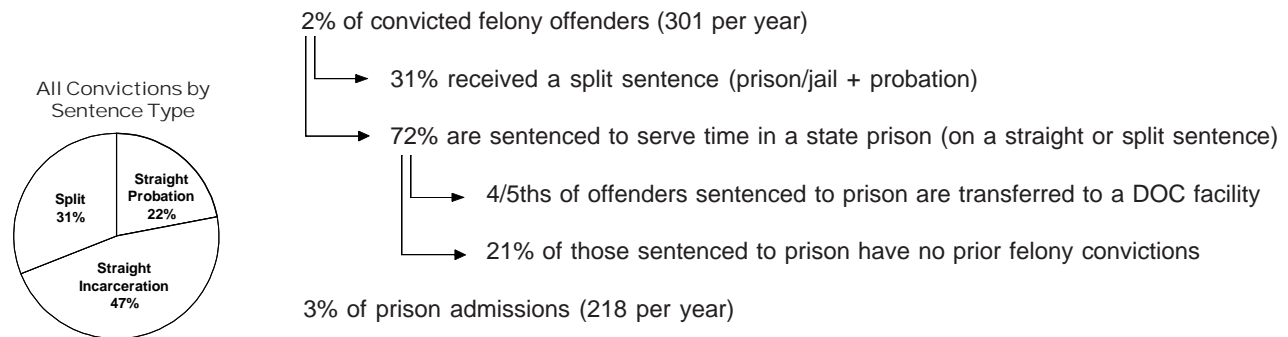
Cases

Breaking and entering a vehicle is not a lesser included offense of burglary in the third degree. *Turner v. State*, 2003 WL 42270 (Ala.Crim.App. 2003).

Theft and unauthorized use of a vehicle are separate and distinct offenses. *McMurphy v. State*, 358 So.2d 1065 (Ala.Crim.App.) cert. denied, 358 So.2d 1069 (Ala.1978). See also, *Crowder v. State*, 476 So.2d 1241 (Ala.Crim.App. 1985) and *Ainsworth v. State*, 501 So.2d 1265 (Ala.Crim.App. 1986), holding that unauthorized use of a motor vehicle is not a lesser included offense of theft.

#14: Robbery 3rd Degree

Class C Felony § 13A-8-43

FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense
Single Count

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	38%	20%	15%**	8%**
	Split	35%	34%	32%	33%
	Straight Incarceration	27%	46%	53%	59%
Straight Probation:	Sentence Length in Months*				
	Midpoint	36	36	36**	36**
	Most Frequent	36	36	60**	36**
	Range	24-36	24-36	12-60**	24-48**
Split Sentence:	Sentence Length in Months*				
	Midpoint	36	60	60	60
	Most Frequent	60	60	60	60
	Range	36-60	36-60	36-60	36-60
Jail/Prison	Midpoint	12	18	21	24
	Most Frequent	7	24	36	36
	Range	7-24	12-27	12-36	12-36
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	48	78	96	180
	Most Frequent	120	120	120	180
	Range	24-120	51-120	36-180	120-240

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#14: Robbery 3rd Degree

Class C Felony § 13A-8-43

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	33%**			8%**
	Split	39%**	29%**	27%**	22%**
	Straight Incarceration	28%**	71%**	73%**	70%
Straight Probation:	Sentence Length in Months*				
	Midpoint	36**			36**
	Most Frequent	36**			36**
	Range	18-75**			
Split Sentence:	Sentence Length in Months*				
	<i>Probation</i>	Midpoint	60**	48**	36**
		Most Frequent	60**	36**	36**
		Range	36-60**		18-60**
	<i>Jail/Prison</i>	Midpoint	24**	24**	36**
		Most Frequent	36**	24**	36**
		Range	9-36**	24-24**	24-60**
	Straight Incarceration:	Sentence Length in Months*			
		Midpoint	60**	300**	120**
		Most Frequent	60**	300**	120**
		Range	14-60**	165-300**	108-126**

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

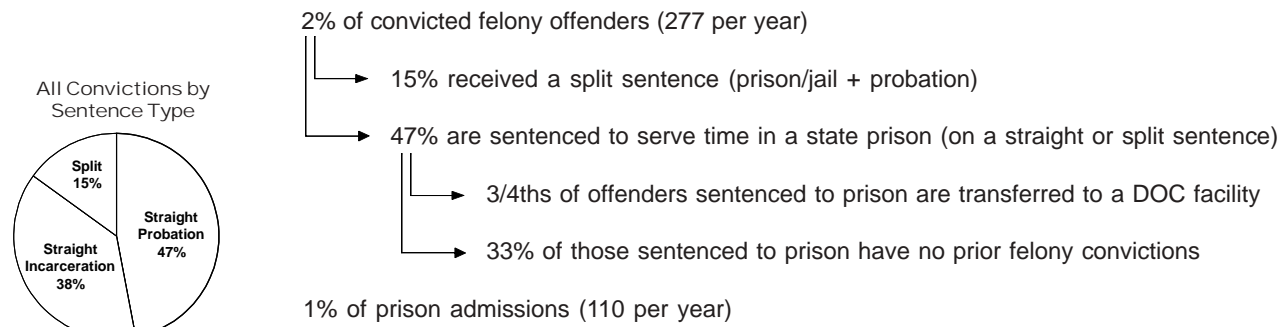
** 20 or fewer offenders statewide.

Cases

Defendant's conviction for robbery 3rd was reversed because the State failed to prove an essential element of the charge of third degree robbery, i.e., the threat of the imminent use of force with intent to compel acquiescence to the taking of, or escaping with, the property. The defendant was, however, convicted for theft of property in the third degree as a lesser-included offense and sentenced to one year in the Mobile County Metro Jail, suspended for time already served, and placed on two years probation. *Franklin v. State*, 2002 WL 31178255 (Ala.Crim.App. 2002), on remand, 2003 WL 42177 (Ala.Crim.App. 2003).

#15: Forgery 2nd Degree

Class C Felony § 13A-9-3

FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense
Single Count

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	60%	33%	26%**	13%**
	Split	15%	15%**	26%**	20%**
	Straight Incarceration	25%	52%	48%	67%
Straight Probation:	Sentence Length in Months*				
	Midpoint	24	24	24**	36**
	Most Frequent	24	24	24**	36**
	Range	24-36	24-36	24-36**	24-42**
Split Sentence:	Sentence Length in Months*				
	<i>Probation</i>				
	Midpoint	36	45**	60**	60**
	Most Frequent	24	36**	60**	60**
	Range	24-48	35-60**	27-123**	36-96**
	<i>Jail/Prison</i>				
	Midpoint	12	7**	12**	18**
	Most Frequent	6	6**	12**	12**
	Range	6-17	6-12**	8-17**	12-24**
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	36	36	60	120
	Most Frequent	36	36	36	180
	Range	24-45	24-75	36-120	60-180

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#15: Forgery 2nd Degree

Class C Felony § 13A-9-3

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	52%	32%	14%**	7%**
	Split	20%	17%**	17%**	27%**
	Straight Incarceration	28%	51%	69%**	66%
Straight Probation:	Sentence Length in Months*				
	Midpoint	36	36	54**	36**
	Most Frequent	36	60	60**	24**
	Range	24-54	24-60	39-60**	
Split Sentence:	Sentence Length in Months*				
<i>Probation</i>	Midpoint	36	66**	60**	60**
	Most Frequent	36	36**	60**	60**
	Range	25-60	39-108**	36-60**	36-60**
<i>Jail/Prison</i>	Midpoint	12**	12**	24**	18**
	Most Frequent	6**	6**	36**	36**
	Range	6-23**	7-23**	12-36**	12-36**
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	36	60	60**	120
	Most Frequent	36	60	60**	180
	Range	24-60	36-60	48-120**	60-180

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

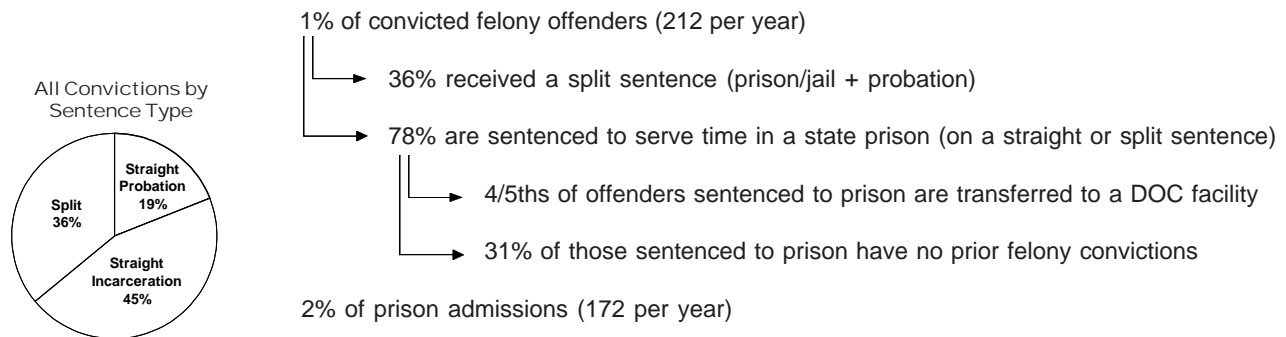
** 20 or fewer offenders statewide.

Cases

Conviction for second degree forgery was upheld where the defendant falsified absentee election ballots, despite the fact that the offense was not committed for pecuniary gain. In this case the Court of Criminal Appeals rejected the defendant's argument that the offense of second degree forgery was encompassed within the offense of illegal absentee voting and, therefore, subject to the maximum 2-year sentence for illegal voting. *Ex parte Evans*, 794 So.2d 441 (Ala. 2001).

#16: Robbery 2nd Degree

Class B Felony § 13A-8-42

FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense
Single Count

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	26%	10%	10%**	
	Split	43%	44%	30%	35%
	Straight Incarceration	31%	46%	60%	65%
Straight Probation:	Sentence Length in Months*				
	Midpoint	36	60	36**	
	Most Frequent	60	60	36**	
	Range	36-60	30-60	9-36**	
Split Sentence:	Sentence Length in Months*				
	Midpoint	60	60	60	60
	Most Frequent	60	60	60	60
	Range	36-60	48-60	60-60	36-60
Jail/Prison	Midpoint	21	24	24	36
	Most Frequent	8	36	36	36
	Range	10-36	12-36	18-36	18-45
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	120	120	180	192
	Most Frequent	180	180	180	240
	Range	60-180	93-180	120-216	180-240

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#16: Robbery 2nd Degree

Class B Felony § 13A-8-42

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions				
		None	One	Two	Three or more	
All Sentences:	Distribution of Sentence Types					
	Straight Probation	17%**	12%**	10%**		
	Split	44%**	29%**	30%**	36%**	
	Straight Incarceration	39%**	59%**	60%**	64%**	
Straight Probation:	Sentence Length in Months*					
	Midpoint	36**	48**	60**		
	Most Frequent	36**	36**	60**		
	Range			60-60**		
Split Sentence:	Sentence Length in Months*					
	Probation	Midpoint	36**	60**	60**	48**
		Most Frequent	36**	60**	60**	36**
		Range	27-57**	48-60**		36-60**
	Jail/Prison	Midpoint	24**	36**	36**	48**
		Most Frequent	24**	36**	36**	36**
		Range	24-36**	24-36**		36-60**
	Straight Incarceration:	Sentence Length in Months*				
		Midpoint	132**	180**	120**	240**
		Most Frequent	180**	180**	120**	240**
		Range	36-180**	138-195**	120-195**	204-240**

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

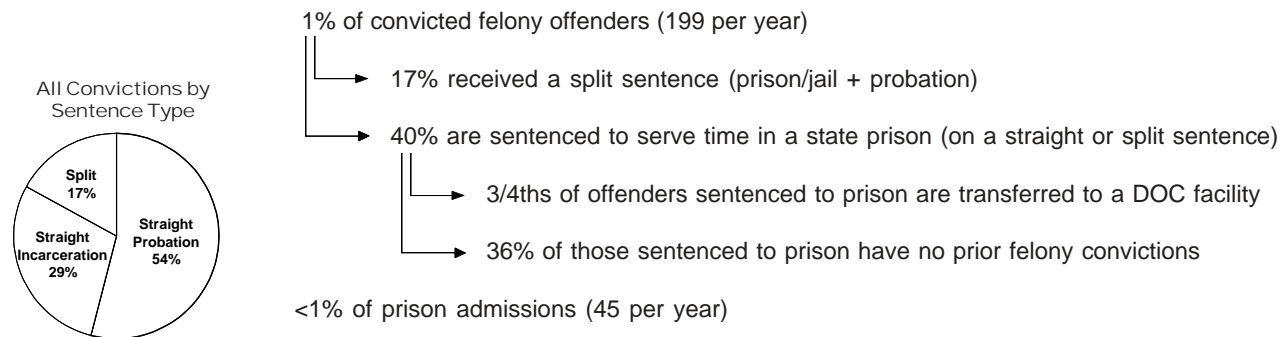
** 20 or fewer offenders statewide.

Cases

Where the indictment did not allege that the defendant was aided by another person, the trial court lacked jurisdiction to accept the defendant's guilty plea to second degree robbery. The defendant's conviction for second degree robbery and sentence as a habitual offender to life imprisonment was ordered vacated. *Toliver v. State*, 2003 WL 21480617 (Ala.Crim.App. 2003).

#17: Possession Fraudulent Use of Credit Card

Class C Felony § 13A-9-14

FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense
Single Count

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	64%	44%	23%**	29%**
	Split	13%	22%	27%**	23%**
	Straight Incarceration	23%	34%	50%	48%
Straight Probation:	Sentence Length in Months*				
	Midpoint	24	24	36**	36**
	Most Frequent	36	24	24**	36**
	Range	24-36	24-36	24-51**	21-60**
Split Sentence:	Sentence Length in Months*				
	Midpoint	36	48	60**	60**
	Most Frequent	36	60	60**	60**
	Range	26-60	36-60	27-65**	30-60**
Jail/Prison	Midpoint	6	9	18**	12**
	Most Frequent	6	6	18**	12**
	Range	6-12	6-24	9-24**	6-15**
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	36	36	108	120
	Most Frequent	24	24	120	180
	Range	24-36	24-66	33-120	42-180

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#17: Possession Fraudulent Use of Credit Card

Class C Felony § 13A-9-14

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	73%	32%**	17%**	
	Split	10%**	26%**	33%**	14%**
	Straight Incarceration	17%**	42%**	50%**	86%**
Straight Probation:	Sentence Length in Months*				
	Midpoint	36	60**	36**	
	Most Frequent	36	60**	36**	
	Range	24-60	33-60**	36-36**	
Split Sentence:	Sentence Length in Months*				
	<i>Probation</i>	Midpoint	60**	36**	48**
		Most Frequent	60**	36**	36**
		Range	24-60**	30-48**	60-60**
	<i>Jail/Prison</i>	Midpoint	6**	12**	36**
		Most Frequent	6**	6**	36**
		Range	6-20**	8-30**	36-36**
	Straight Incarceration:	Sentence Length in Months*			
		Midpoint	36**	54**	36**
		Most Frequent	24**	24**	36**
		Range	24-57**	27-153**	36-180**

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

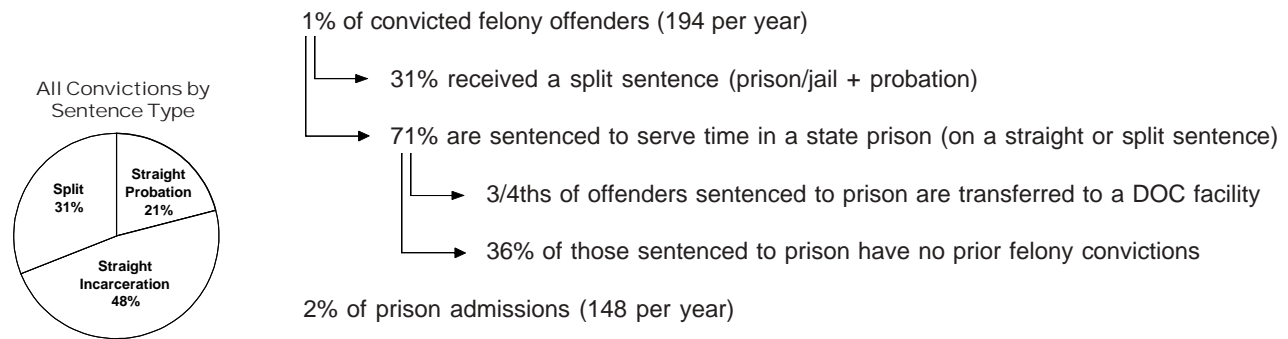
** 20 or fewer offenders statewide.

Cases

The defendant, convicted for the fraudulent use of a credit card, escaped and was sentenced at a sentence hearing in which his counsel failed to appear, to ten years imprisonment. Remanding for resentencing, the Court of Criminal Appeal held that his sentence was presumptively prejudicial. *McDonald v. State*, 668 So.2d 89 (Ala.Crim.App. 1995).

#18: Sexual Abuse 1st Degree

Class C Felony § 13A-6-66

FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense
Single Count

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	26%	8%**	9%**	7%**
	Split	39%	35%	25%**	25%**
	Straight Incarceration	35%	57%	66%	68%
Straight Probation:	Sentence Length in Months*				
	Midpoint	48	36**	48**	42**
	Most Frequent	60	36**	36**	24**
	Range	36-60	36-60**	36-60**	24-105**
Split Sentence:	Sentence Length in Months*				
	Midpoint	60	60	60**	60**
	Most Frequent	60	60	60**	60**
	Range	36-60	36-60	30-60**	36-60**
Jail/Prison	Midpoint	12	18	24**	24**
	Most Frequent	6	6	24**	12**
	Range	6-24	12-25	8-33**	12-36**
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	72	60	120	180
	Most Frequent	120	120	120	180
	Range	36-120	36-120	60-180	84-180

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#18: Sexual Abuse 1st Degree

Class C Felony § 13A-6-66

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions				
		None	One	Two	Three or more	
All Sentences:	Distribution of Sentence Types					
	Straight Probation	28%**	4%**			
	Split	28%**	33%**	20%**	28%**	
	Straight Incarceration	44%	63%**	80%**	72%**	
Straight Probation:	Sentence Length in Months*					
	Midpoint	60**	60**			
	Most Frequent	60**	60**			
	Range	24-60**	60-60**			
Split Sentence:	Sentence Length in Months*					
	Probation	Midpoint	60**	60**	35**	60**
		Most Frequent	60**	60**	10**	60**
		Range	50-63**	60-87**		30-78**
	Jail/Prison	Midpoint	14**	21**	54**	24**
		Most Frequent	12**	24**	12**	18**
		Range	12-30**	8-24**		18-42**
	Straight Incarceration:	Sentence Length in Months*				
		Midpoint	120	120**	120**	180**
		Most Frequent	120	60**	120**	180**
		Range	57-120	60-180**	66-180**	180-240**

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

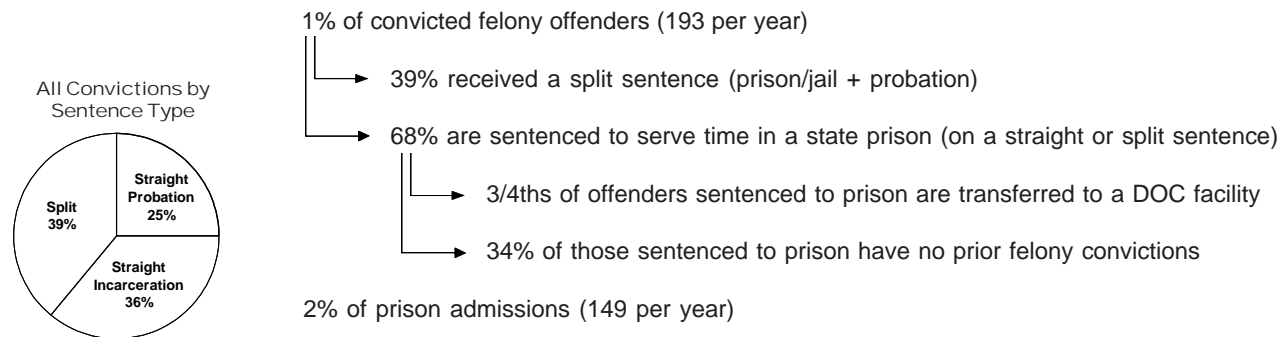
Cases

Separate convictions and sentences can be imposed for first degree sexual abuse and first degree sodomy without constituting double jeopardy when the offenses arise from separate and distinct acts. *Holley v. State*, 671 So.2d 131 (Ala.Crim.App. 1995), rehearing denied, certiorari denied.

Sentence of first time offender to 30 years imprisonment for sexual assault in the first degree was found excessive when the maximum punishment authorized was ten years. *Jones v. State*, 724 So.2d 75 (Ala.Crim.App. 1998).

#19: Assault 1st Degree

Class B Felony § 13A-6-20

FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense
Single Count

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	36%	13%	15%**	
	Split	41%	51%	32%**	36%**
	Straight Incarceration	23%	36%	53%	64%
Straight Probation:	Sentence Length in Months*				
	Midpoint	36	60	60**	
	Most Frequent	60	60	60**	
	Range	36-60	36-60	36-60**	
Split Sentence:	Sentence Length in Months*				
	Midpoint	60	60	60**	60**
	Most Frequent	60	60	60**	60**
	Range	36-60	48-60	24-60**	36-60**
Jail/Prison	Midpoint	18	24	18**	30**
	Most Frequent	6	24	48**	36**
	Range	6-30	12-36	8-39**	24-36**
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	120	120	180	180
	Most Frequent	120	120	180	180
	Range	60-180	114-180	120-186	132-228

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#19: Assault 1st Degree

Class B Felony §13A-6-20

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	43%**	10%**		
	Split	24%**	60%**	50%**	20%**
	Straight Incarceration	33%**	30%**	50%**	80%**
Straight Probation:	Sentence Length in Months*				
	Midpoint	60**	60**		
	Most Frequent	60**	60**		
	Range	42-60**	60-60**		
Split Sentence:	Sentence Length in Months*				
<i>Probation</i>	Midpoint	60**	36**	60**	60**
	Most Frequent	60**	36**	60**	60**
	Range	36-60**	36-117**	60-60**	60-60**
<i>Jail/Prison</i>	Midpoint	12**	24**	36**	60**
	Most Frequent	12**	24**	36**	60**
	Range	9-27**	8-42**	36-36**	60-60**
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	60**	120**	132**	180**
	Most Frequent	6**	120**	24**	60**
	Range	12-120**			

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

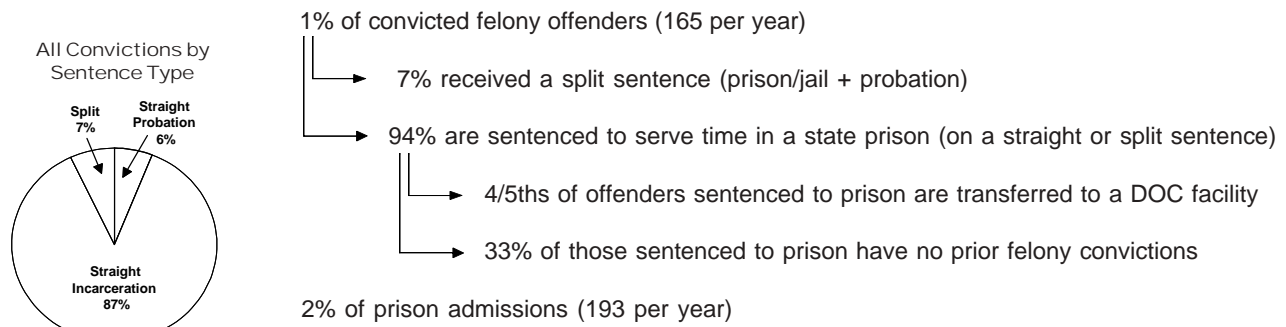
Cases

Assault cannot be considered as the underlying felony to support a felony-murder charge when the felonious assault results in the victim's death. *Barnett v. State*, 783 So.2d 927 (Ala.Crim.App. 2000).

A 23 year sentence for attempted assault in the first degree, a Class C felony, was held to exceed the maximum authorized by law and required remand to the trial court for resentencing. *Miller v. State*, 785 So.2d 399 (Ala.Crim.App. 2000).

#20: Murder

Class A Felony § 13A-6-2

FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense
Single Count

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	2%**	1%**		
	Split	12%**	9%**	2%**	2%**
	Straight Incarceration	86%	90%	98%	98%
Straight Probation:	Sentence Length in Months*				
	Midpoint	36**	60**		
	Most Frequent	36**	60**		
	Range		60-60**		
Split Sentence:	Sentence Length in Months*				
	Probation	Midpoint	60**	144**	60**
		Most Frequent	60**	144**	60**
		Range	60-86**	60-60**	60-60**
	Jail/Prison	Midpoint	60**	36**	60**
		Most Frequent	60**	36**	60**
		Range	36-60**	36-36**	60-60**
	Sentence Length in Months*				
	Midpoint	300	276	300	240**
	Most Frequent	240	240	240	240**
	Range	240-360	240-300	246-546	240-360**

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#20: Murder

Class A Felony § 13A-6-2

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation				
	Split				
	Straight Incarceration	100%**	100%**	100%**	100%**
Straight Probation:	Sentence Length in Months*				
	Midpoint				
	Most Frequent				
	Range				
Split Sentence:	Sentence Length in Months*				
	<i>Probation</i>				
	Midpoint				
	Most Frequent				
	<i>Jail/Prison</i>				
	Midpoint				
	Most Frequent				
	Range				
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	60**	300**	240**	
	Most Frequent	60**	300**	240**	
	Range	60-60**	300-300**	240-240**	

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#20: Murder

Class A Felony § 13A-6-2

Cases

Double jeopardy bars the retrial of a defendant for murder following a conviction of vehicular homicide arising from the same transaction. *Ex parte Whirley*, 530 So.2d 865 (Ala.1988).

Double jeopardy precludes convictions for felony murder and reckless murder arising from the death of the same victim. *Rolling v. State*, 673 So.2d 812 (Ala. 1995).

Conviction for intentional murder was prohibited where the defendant was convicted of the capital offense of double murder and the intentional murder of one of the victims was an element of the capital offense. *Borden v. State*, 711 So.2d 498 (Ala.Crim.App. 1997), rehearing denied, ordered affirmed, 711 So.2d 506, certiorari denied 119 S.Ct. 113.

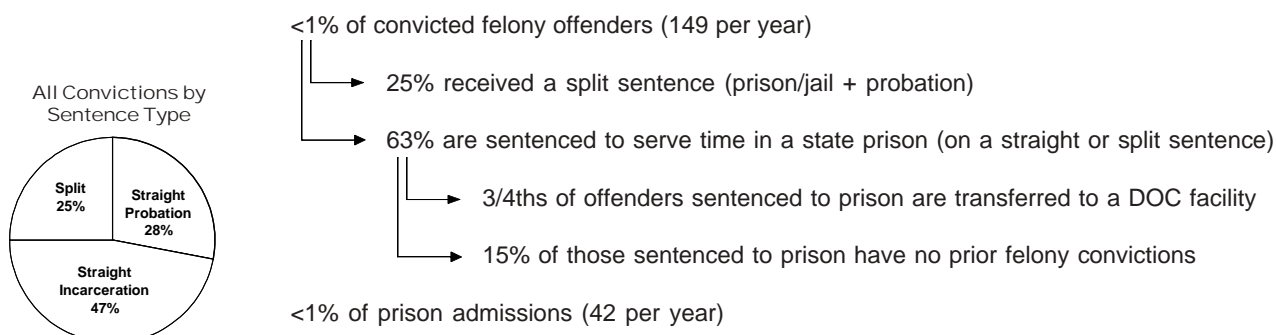
Sentence of twenty years, rather than 15, was applicable for attempted murder in which the defendant used a firearm in committing the offense. *Daniels v. State*, 762 So.2d 864 (Ala.Crim.App. 1999).

Firearm enhancement was properly applied to a defendant convicted of reckless murder where the defendant intentionally retrieved the gun from his car, loaded it and fired into a crowd of people. *Williams v. State*, 736 So.2d 1134 (Ala.Crim.App. 1998), rehearing denied, certiorari denied, denial of post-conviction relief affirmed by *ex parte Williams*, 838 So.2d 1028 (Ala. 2002).

Where a jury found the defendant guilty of both felony murder during a kidnapping and felony murder committed during a robbery in violation of double jeopardy, the trial court erred in merely vacating one conviction and its corresponding sentence. *Ex parte Rice*, 766 So.2d 143 (Ala. 1999); *See also, Loggins v. State*, 771 So.2d 1070 (Ala.Crim.App. 1999).

#21: Escape 3rd Degree

Class C Felony § 13A-10-33



FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense Single Count

		# of Prior Felony Convictions				
		None	One	Two	Three or more	
All Sentences:	Distribution of Sentence Types					
	Straight Probation	51%	27%	22%**	9%**	
	Split	18%	23%	26%**	35%	
	Straight Incarceration	31%	50%	52%	56%	
Straight Probation:	Sentence Length in Months*					
	Midpoint	24	36	36**	36**	
	Most Frequent	24	36	24**	60**	
	Range	24-36	24-36	24-36**	24-60**	
Split Sentence:	Sentence Length in Months*					
	Probation	Midpoint	27	60	42**	60
		Most Frequent	24	60	36**	60
		Range	24-36	27-60	36-60**	36-84
	Jail/Prison	Midpoint	6	12	12**	18
		Most Frequent	6	6	12**	24
		Range	6-12	6-24	6-36**	12-24
	Straight Incarceration:	Sentence Length in Months*				
		Midpoint	24	36	114	180
		Most Frequent	24	60	24	180
		Range	12-39	24-60	24-165	120-180

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#21: Escape 3rd Degree

Class C Felony § 13A-10-33

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	50%**	43%**	20%**	
	Split		14%**	20%**	
	Straight Incarceration	50%**	43%**	60%**	
Straight Probation:	Sentence Length in Months*				
	Midpoint	24**	24**	60**	
	Most Frequent	24**	12**	60**	
	Range			60-60**	
Split Sentence:	Sentence Length in Months*				
<i>Probation</i>	Midpoint		60**	36**	
	Most Frequent		60**	36**	
	Range		60-60**	36-36**	
<i>Jail/Prison</i>	Midpoint		18**	6**	
	Most Frequent		18**	6**	
	Range		18-18**	6-6**	
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	24**	84**	60**	
	Most Frequent	6**	24**	12**	
	Range				

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

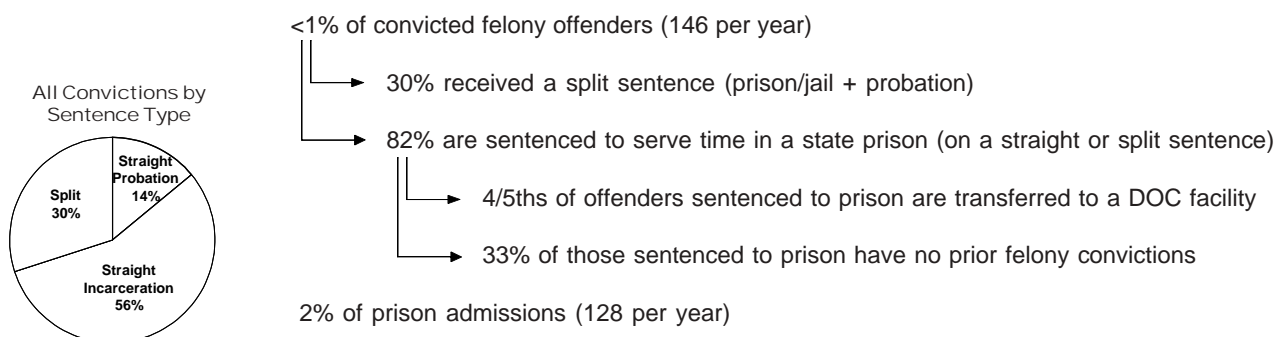
Cases

Where an assault conviction serves as an element of a first degree escape charge, it cannot be used to enhance the escape sentence under the Habitual Felony Offender statute. *Humphrey v. State*, 686 So.2d 491 (Ala.Crim.App. 1996); *Ringer v. State*, 501 So.2d 493 (Ala.Crim.App. 1986).

A sentence imposed for escape cannot be enhanced under the Habitual Felony Offender Act by a prior felony conviction for which the defendant was incarcerated at the time of his escape. *Capps v. State*, 587 So.2d 442 (Ala.Crim.App. 1991).

#22: Manslaughter

Class B Felony § 13A-6-3



FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense Single Count

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	19%	9%**	2%**	2%**
	Split	38%	28%	31%**	19%**
	Straight Incarceration	43%	63%	67%	79%
Straight Probation:	Sentence Length in Months*				
	Midpoint	54	60**	60**	60**
	Most Frequent	60	60**	60**	60**
	Range	36-60	36-60**	60-60**	60-60**
Split Sentence:	Sentence Length in Months*				
	<i>Probation</i>	Midpoint	60	60**	60**
		Most Frequent	60	60**	60**
		Range	48-60	60-60**	36-60**
	<i>Jail/Prison</i>	Midpoint	36	36**	36**
		Most Frequent	36	36**	36**
		Range	14-36	30-60**	18-60**
	Straight Incarceration:	Midpoint	180	192	240**
		Most Frequent	180	240	240**
		Range	120-216	171-240	240-240**

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#22: Manslaughter

Class B Felony § 13A-6-3

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation		25%**		33%**
	Split	33%**		50%**	
	Straight Incarceration	67%**	75%**	50%**	67%**
Straight Probation:	Sentence Length in Months*				
	Midpoint		60**		60**
	Most Frequent		60**		60**
	Range		60-60**		60-60**
Split Sentence:	Sentence Length in Months*				
<i>Probation</i>	Midpoint	84**		24**	
	Most Frequent	84**		24**	
	Range	84-84**		24-24**	
<i>Jail/Prison</i>	Midpoint	12**		36**	
	Most Frequent	12**		36**	
	Range	12-12**		36-36**	
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	240**	180**		240**
	Most Frequent	240**	180**		240**
	Range	240-240**			240-240**

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

Cases

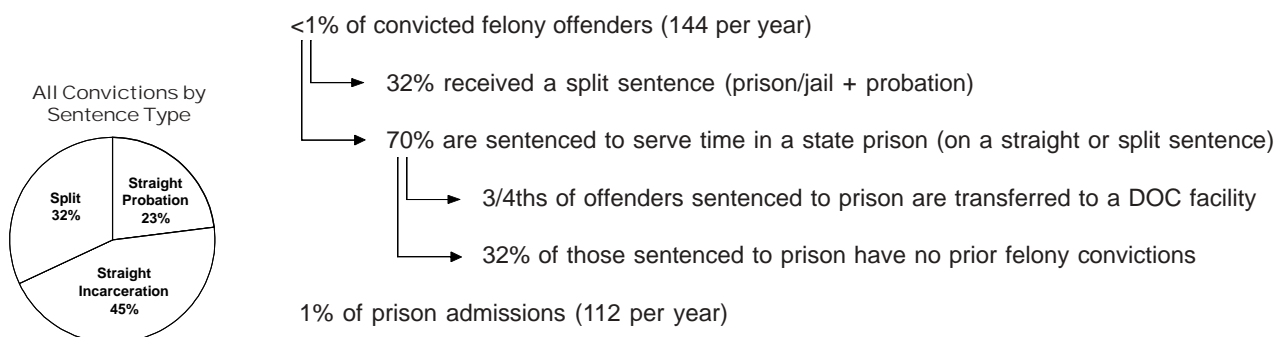
Two types of manslaughter, "reckless" and "heat of passion" manslaughter, are not separate offenses for double jeopardy purposes. *Ex parte Ziglar*, 675 So.2d 543 (Ala.Crim.App. 1996).

Firearm enhancement statute held not to apply to charge of reckless manslaughter where the defendant's conduct did not reach the level of culpability required to invoke the enhancement provisions. *Ex parte McCree*, 554 So.2d 336 (Ala. 1988).

Where jury verdict did not specify where the defendant's conduct was reckless or intentional, manslaughter conviction could not be enhanced under Alabama's firearm enhancement statute. *Ward v. State*, 689 So.2d 218 (Ala.Crim.App. 1996), opinion after remand 689 So.2d 220, rehearing denied, certiorari denied. *See also, Thomas v. State*, 654 So. 2d 57 (Ala.Crim.App. 1994). See additional opinions in "Cases" chapter.

#23: Burglary 2nd Degree

Class B Felony § 13A-7-6



FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense Single Count

		# of Prior Felony Convictions				
		None	One	Two	Three or more	
All Sentences:	Distribution of Sentence Types					
	Straight Probation	31%	14%**	8%**	3%**	
	Split	38%	30%	36%**	40%	
	Straight Incarceration	31%	56%	56%**	57%	
Straight Probation:	Sentence Length in Months*					
	Midpoint	36	36**	24**	24**	
	Most Frequent	60	36**	12**	24**	
	Range	24-60	24-54**		24-24**	
Split Sentence:	Sentence Length in Months*					
	Probation	Midpoint	54	60	60**	60
		Most Frequent	60	60	60**	60
		Range	36-60	36-60	36-60**	48-60
	Jail/Prison	Midpoint	10	24	21**	30
		Most Frequent	6	12	6**	24
		Range	6-14	12-30	8-54**	24-48
	Straight Incarceration:	Sentence Length in Months*				
		Midpoint	60	96	120**	174
		Most Frequent	36	120	120**	240
		Range	36-120	48-120	89-225**	105-240

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#23: Burglary 2nd Degree

Class B Felony § 13A-7-6

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	36%**	33%**		13%**
	Split	36%**			25%**
	Straight Incarceration	28%**	67%**		62%**
Straight Probation:	Sentence Length in Months*				
	Midpoint	48**	48**		60**
	Most Frequent	36**	36**		60**
	Range	36-60**			60-60**
Split Sentence:	Sentence Length in Months*				
<i>Probation</i>	Midpoint	48**			60**
	Most Frequent	36**			24**
	Range	36-60**			
<i>Jail/Prison</i>	Midpoint	12**			30**
	Most Frequent	6**			24**
	Range	6-32**			
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	48**	96**		150**
	Most Frequent	12**	36**		60**
	Range		45-165**		75-225**

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

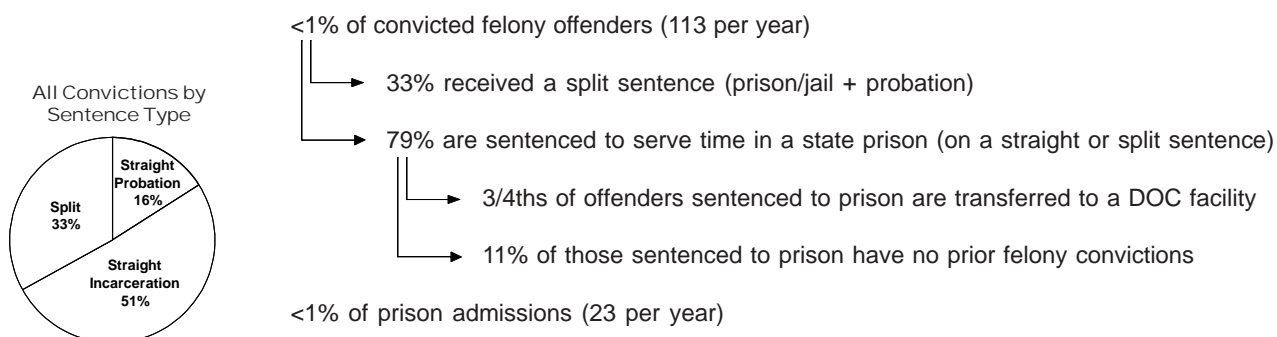
** 20 or fewer offenders statewide.

Cases

After the defendant's conviction for first degree burglary was overturned, the trial court could resentence him for the lesser included offense of burglary in the second degree without violating the principles of double jeopardy. *Evans v. State*, 568 So.2d 878 (Ala. Crim.App. 1990).

#24: Escape 2nd Degree

Class C Felony § 13A-10-32



FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense Single Count

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	34%	19%**	9%**	6%**
	Split	21%**	25%	32%**	43%
	Straight Incarceration	45%	56%	59%	51%
Straight Probation:	Sentence Length in Months*				
	Midpoint	24	24**	24**	24**
	Most Frequent	24	24**	24**	24**
	Range	20-36	12-51**	24-36**	15-33**
Split Sentence:	Sentence Length in Months*				
	<i>Probation</i>	Midpoint	36**	60	60**
		Most Frequent	36**	24	60**
		Range	24-60**	24-108	36-87**
	<i>Jail/Prison</i>	Midpoint	10**	9	18**
		Most Frequent	6**	12	12**
		Range	6-24**	6-12	11-32**
	Sentence Length in Months*				
	Midpoint	36	60	60	180
	Most Frequent	120	180	120	180
	Range	24-120	36-132	24-120	120-180

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#24: Escape 2nd Degree

Class C Felony § 13A-10-32

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation				
	Split		100%**		
	Straight Incarceration	100%**		100%**	100%**
Straight Probation:	Sentence Length in Months*				
	Midpoint				
	Most Frequent				
	Range				
Split Sentence:	Sentence Length in Months*				
<i>Probation</i>	Midpoint		114**		
	Most Frequent		60**		
	Range				
<i>Jail/Prison</i>	Midpoint		18**		
	Most Frequent		6**		
	Range				
Straight Incarceration:	Sentence Length in Months*				
	Midpoint	6**		12**	36**
	Most Frequent	6**		12**	36**
	Range	6-6**		12-12**	36-36**

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

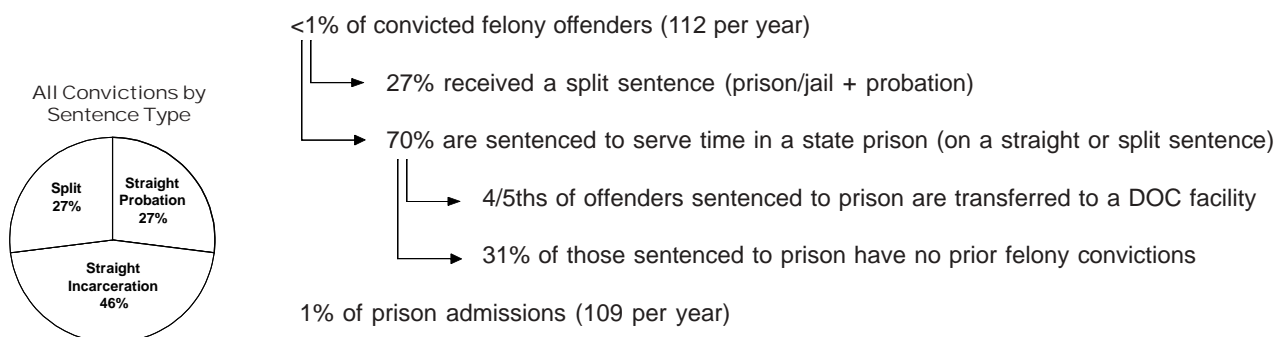
Cases and Special Penalty Provisions

Defendant's concurrent 21-year sentence for escape in the second degree and theft of property in the second degree was void because it exceeded the maximum sentence authorized by law – ten years. *Morris v. State*, 733 So.2d 912 (Ala.Crim.App. 1998).

Defendant's escape from a federal correctional institution was properly used to enhance the defendant's sentence under the Habitual Felony Offender Act. *Bridges v. State*, 563 So.2d 13 (Ala.Crim.App. 1989).

#25: Burglary 1st Degree

Class A Felony § 13A-7-5



FY1999-2002 Statewide Sentencing Practices for a Single Conviction Offense Single Count

		# of Prior Felony Convictions				
		None	One	Two	Three or more	
All Sentences:	Distribution of Sentence Types					
	Straight Probation	33%	9%**			
	Split	30%	45%	39%**	25%**	
	Straight Incarceration	37%	46%	61%**	75%**	
Straight Probation:	Sentence Length in Months*					
	Midpoint	36	60**			
	Most Frequent	36	60**			
	Range	24-60	15-120**			
Split Sentence:	Sentence Length in Months*					
	Probation	Midpoint	60	60	60**	
		Most Frequent	60	60	60**	
		Range	36-60	36-60	36-60**	
	Jail/Prison	Midpoint	24	24	19**	36**
		Most Frequent	36	12	12**	36**
		Range	12-36	12-36	12-36**	
	Straight Incarceration:	Sentence Length in Months*				
		Midpoint	120	162	120**	180**
		Most Frequent	120	120	120**	120**
		Range	120-180	120-240	120-210**	120-204**

* Midpoint is the median (1/2 of all offenders are sentenced above and below this value). Most Frequent is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#25: Burglary 1st Degree

Class A Felony § 13A-7-5

FY1999-2002 Statewide Sentencing Practices for Multiple Counts

		# of Prior Felony Convictions			
		None	One	Two	Three or more
All Sentences:	Distribution of Sentence Types				
	Straight Probation	50%**	20%**		
	Split	25%**	20%**		
	Straight Incarceration	25%**	60%**		100%**
Straight Probation:	Sentence Length in Months*				
	Midpoint	48**	48**		
	Most Frequent	60**	48**		
	Range	9-60**	48-48**		
Split Sentence:	Sentence Length in Months*				
	<i>Probation</i>	Midpoint	132**	60**	
		Most Frequent	60**	60**	
		Range		60-60**	
	<i>Jail/Prison</i>	Midpoint	33**	24**	
		Most Frequent	30**	24**	
		Range		24-24**	
	Straight Incarceration:	Sentence Length in Months*			
		Midpoint	150**	120**	120**
		Most Frequent	60**	120**	120**
		Range			

* **Midpoint** is the median (1/2 of all offenders are sentenced above and below this value). **Most Frequent** is the mode (the most frequently occurring value).

Range reflects the "middle 50%" of offenders as defined by the 25th and 75th percentiles (25% of offenders are sentenced below this range and 25% are sentenced above this range).

** 20 or fewer offenders statewide.

#25: Burglary 1st Degree
Class A Felony § 13A-7-5

Cases

The crimes of first degree robbery and first degree burglary are separate offenses and neither is a lesser included offense of the other. Simultaneous convictions and separate sentences are authorized but where crimes arise out of the same transaction, the sentences must be served concurrently. *Jones v. State*, 672 So.2d 1366 (Ala.Crim. App. 1995), rehearing denied, certiorari denied.

The defendant was properly convicted of first degree burglary and first degree robbery. *Lewis v. State*, 659 So.2d 183 (Ala.Crim.App. 1994), rehearing denied, certiorari denied.; *See also, Ex parte Dixon*, 804 So.2d 1075 (Ala. 2000).

See Gilmer v. State, 675 So.2d 67 (Ala.Crim.App 1995), rehearing denied, certiorari denied, in which the firearm enhancement statute was applied to a burglary sentence.

Although the taking of firearms during the commission of a burglary raised the offense to first degree burglary, where the defendant did not use or attempt to use them to commit the felony, firearm enhancement statute did not apply. *Ex parte Bates*, 709 So.2d 1115 (Ala. 1997), rehearing denied, on remand 709 So.2d 1117.

Chapter 3: Alternative Sentencing

Straight Probation (not split)

For sentences of 15 years or less,¹ the sentencing judge may suspend execution of the sentence and place the defendant on probation or “impose a fine within the limits fixed by law and also place the defendant on probation.” §15-22-50, *Code of Alabama 1975*.

5 Year Limitation for Felons

The term of straight probation for a felon may not exceed five (5) years.

3-Year Limitation Applies to Youthful Offenders

For youthful offenders the term of probation may not exceed 3 years, including consecutive sentences. § 15-19-6, *Code of Alabama 1975*; *Jackson v. State*, 415 So.2d 1169 (Ala. 1994).

Modification/Revocation of Probation

The court may continue, extend or terminate the period of probation, but not beyond the original 5-year period. § 15-22-54, *Code of Alabama 1975*. Upon revocation of probation, the court may split the original sentence, but the total time spent in confinement may not exceed the original maximum period the offender would have served under the original sentence, without regard to any deductions. *Parker v. State*, 648 So.2d 653 (Ala. Crim. App.1994); *Phillips v. State*, 755 So.2d 63 (Ala.Crim.App. 1996). See also Rules 27.2, 27.4, 27.5, Alabama Rules of Criminal Procedure.

Payment of Fines, Costs and Restitution

A court order to pay a fine, costs and restitution is an absolute liability and is not dependent on the probationary term and discharge from probation does not release the defendant from his or her obligation to pay. *Little v. State*, 693 So.2d 30 (Ala.Crim.App.1997).

Termination of Probation

The probationary period ends when the probationer either: (1) successfully fulfills the conditions of probation, or (2) receives a formal discharge from the trial court. *Sherer v. State*, 486 So.2d 1330 (Ala.Crim.App. 1986); *See also Young v. State*, 552 So.2d 879 (Ala.Crim.App. 1989). See Rule 27.3, Alabama Rules of Criminal Procedure.

Split Sentence

The split sentence is now used as the preferred sentencing option for over 40% of convicted felons. This statute may be utilized for any offender convicted and sentenced to a period of incarceration of 20 years or less, with the actual term of imprisonment as follows:

¹ Alabama's Split Sentence Act (§ 15-18-8) was amended in 2000 to apply to persons sentenced to more than 15 years but not more than 20 years imprisonment, with the authorized sentence of no less than 3 and not more than 5 years confinement in a prison, jail-type institution or treatment institution, with the remainder of the sentence suspended. Section 15-22-50 relating to straight probation (with a maximum term of supervision for felony offenders of 5 years), which excluded defendants sentenced to death or imprisonment in the penitentiary for more than 15 years was *not* amended and continues to include these restrictions.

Sentence of ***up to 15 years imprisonment***² = ***no more than 3 years actual confinement*** (which is not subject to parole or good time deductions), with remainder of the sentence suspended.

Sentence of ***greater than 15 but not more than 20 years imprisonment*** = ***not less than three but no more than five years confinement*** (which is not subject to parole or good time deductions), with the remainder of the sentence suspended.

(Applicable only for defendants sentenced on or after May 25, 2000, or whose sentence was not final in the trial court on May 25, 2000.)

§ 15-8-8, *Code of Alabama 1975*.

Boot Camp

Section 15-18-8(a)(2), *Code of Alabama 1975*, authorizes a judge to sentence defendants convicted and sentenced under the split sentence statute to “boot camp” “upon consultation with the Commissioner of the Alabama Department of Corrections.” These are military-style disciplinary and rehabilitation conservation programs that operate under the rules and regulations of the Department of Corrections.

Progress reports, advising whether the defendant has completed or not completed the program are provided to the sentencing court by the Department of Corrections. Upon receipt of these reports the sentencing court is authorized to :

- “suspend the remainder of the sentence and place the convicted defendant on probation;
- “order the convicted defendant to be confined to a prison, jail-type institution or treatment institution for a period not to exceed three years and that the execution of the remainder of the sentence be suspended and the defendant be placed on probation for such period and upon such terms as the court deems best.”³

When additional confinement is imposed, credit must be given for the actual time served in the program by the offender.

Excluded offenders – Offenders sentenced to life imprisonment without parole and offenders that are now, or have ever been convicted of the following offenses are prohibited from participating in the “boot camp” program:

- ✗ Murder;
- ✗ Rape in the first degree;
- ✗ Kidnapping in the first degree;
- ✗ Sodomy in the first degree;
- ✗ Enticing a child to enter a vehicle, house, etc., for immoral purposes;
- ✗ Arson in the first degree; and
- ✗ Robbery in the first degree

² In prison, jail-type institution, or treatment institution.

³ An order dismissing a defendant from boot camp and ordering him to serve his period of confinement in prison is a nonappealable order. *Romanick v. State*, 816 So.2d 1081 (Ala.Crim.App. 2001).

Certain Enhancements No Longer Mandatory

Mandatory Minimums No Longer Mandatory After Amendment of Alabama's Split Sentencing Statute For Sentences of 20 years or Less

***Soles v. Alabama*, 820 So.2d 163 (Ala.Crim.App. 2001)**

The recent amendment to Alabama's split sentencing statute (effective 5/25/01) supercedes the prohibitions against probation of the 5 year mandatory enhancement provisions in § 13A-12-250 and § 13-12-270 for the sale of drugs within 3 miles of a school or housing project and allows a trial court to suspend sentences of 20 years or less. *See also Tucker v. State*, 2001 WL 1520625 (Ala.Crim.App. 2001).

In *Soles*, the Court of Criminal Appeals held that Alabama's split sentencing statute (§ 15-18-8), as last amended, allows a trial court to suspend a sentence imposed upon application of the five year enhancement statutes for persons convicted of the unlawful sale of a controlled substance within three miles of a school or public housing project. Although the *Soles* case only involved enhancements pursuant to the 3-mile radius statutes, applying the same rationale to other enhancement statutes (firearm enhancement, domestic violence, hate crimes, DUI, enticing a child to enter a vehicle, house, etc., and drug trafficking), would apparently lead to the same conclusion because the amendment of the split sentencing statute was the latest expression of the Legislature on the subject.

Felony DUI

Confinement May be in County Jail if Sentence Does Not Exceed 3 Years⁴

The minimum sentence shall include a term of imprisonment for one year and one day, of which 10 days is mandatory. The remainder of the term of imprisonment can be suspended or probated if the defendant is placed on probation and a condition of probation is that (s)he "enrolls and successfully completes a state certified chemical dependency program recommended by the court referral officer and approved by the sentencing court." § 32-5A-191(h).

The Felony DUI statute specifically provides that, where the defendant is granted probation, "the sentencing court may, in its discretion, and where monitoring equipment is available, place the defendant on house arrest under electronic surveillance during the probationary term." § 32-5A-191(h).

Community Corrections and Punishment Act

Title 15, Chapter 18, Article 9, *Code of Alabama 1975*.

Notwithstanding any law to the contrary, judges are authorized to sentence eligible offenders to appropriate community-based punishment programs either in conjunction with a split sentence, as an alternative to prison, or as a condition of probation. In sentencing offenders to any community-based alternative program, the court is authorized to set the duration of the sentence for the offense committed "to any period of time up to the maximum sentence within the appropriate range for the particular offense." § 15-18-175(d), *Code of Alabama 1975*.

⁴ This is true for any felony offense, but was reiterated in the DUI statute when § 32-5A-191 was amended to increase the offense to a felony for fourth and subsequent convictions. See § 15-18-1(b).

The purpose of community corrections is to provide services that expand the options available for the supervision and sentencing of criminal defendants. The various components of community corrections programs target different offender groups or offenders, for services within the various levels of the criminal justice system including misdemeanants, pretrial, therapeutic courts (i.e. pre-sentence or pre-effective date of sentence) and post-sentence (i.e. prison diversions up-front and back-end). Components most often include pretrial supervision, drug court and client specific alternative sentencing with several counties expanding their outreach to include mental health court, community service, victim/offender mediation and services (i.e. GED preparation, cognitive skills training, drug education).

Ineligible Offenders

Any person convicted of the following felony offenses is ineligible for community corrections punishment: (1) murder, (2) first degree kidnapping, (3) first degree rape, (4) first degree sodomy, (5) first degree arson, (6) selling or trafficking in controlled substances, (7) first degree robbery, (8) first degree sexual abuse, (9) forcible sex crimes, (10) lewd and lascivious acts upon a child and (11) first degree assault that leaves the victim permanently disfigured or disabled. § 15-18-171 (13), *Code of Alabama*, 1975, as amended by Act 2003-353, § 15-18-171(14).

Pretrial Services

Common eligibility criteria: Incarcerated pretrial defendants who can be released if provided pretrial supervision.

Jail overcrowding is a common problem in the majority of the state's counties. In 1998, Jefferson County faced legal action in a long-standing federal lawsuit brought against it as a result of dangerously overcrowded conditions in its two detention facilities. In response, the County Commission funded a justice system study to examine the criminal justice process within the jurisdiction. Results found that court and jail crowding "resulted from system delays due to management problems (including a lengthy adjudication process and coordinated pretrial services), rather than from increases in population, crime or arrests."⁵ In order to address system shortfalls, a series of initiatives including enhanced pretrial services were implemented. As a result, the jail population was reduced and construction of a new jail facility was tabled indefinitely. During FY 2001, the Jefferson County Community Corrections Program interviewed 1,368 and released 1,017 offenders into community supervision on recognizance bonds.

Programs to effectively manage offenders in the community are critical to controlling the local jail population. Without community corrections' pretrial efforts, many offenders would have remained incarcerated and aggravated an already critically overcrowded jail. By assisting the judiciary in providing alternative means of supervision, limited jail space has been more efficiently utilized. Further, the monitoring of pretrial arrestees encourages a greater probability of compliance with the conditions of release and reduces the probability of rearrest on a new offense.

Pretrial services offers case management, criminal justice supervision, electronic monitoring, random urinalysis and drug treatment services. Trained staff members thoroughly assess defendants for drug use as well as criminal history, employment, housing and mental illness. Through these assessments, substance abuse issues, public safety risk and ancillary concerns are identified and addressed in the defendant's release plan. Utilizing its linkage system, the programs serve as brokers to an enhanced continuum of community based substance abuse treatment and other services. Offender compliance is reported directly back to the court.

⁵ *Jefferson County Justice System Assessment*, Institute for Law and Policy Planning, August 1999.

According to the defendant's charge, criminal history and/or diagnosis, he/she may be referred directly to available drug courts, deferred prosecution or mental health courts.

Therapeutic Courts

Common eligibility criteria: (1) Admission into drug court requires a drug-related, non-violent offense. (2) In order to be eligible for mental health court, the individual must have a recent Axis I diagnosis (i.e. schizophrenia, bipolar disorder) and a non-violent charge. Additional eligibility criteria may apply to local programs.

According to the Bureau of Justice Statistics, approximately 283,800 mentally ill offenders were incarcerated in the nation's jails and prisons as of June 30, 1998. Sixteen percent of those in local jails reported either a mental condition or an overnight stay in a mental hospital. In addition, 65 percent of adult males arrested within Jefferson County, Alabama, in 2000 tested positive for an illegal substance.⁶ This includes 72 percent of those arrested for property offenses and 65 percent of those arrested for drug related charges.

Therapeutic courts, such as drug court and mental health court, are designed to meet the specific needs of defendants who are drug involved and/or seriously mentally ill through an enhanced array of services including intensive offender supervision, judicial oversight and expanded program requirements (i.e. community service, employment, medication compliance). Through the collective efforts of the defense attorney, prosecutor, community corrections staff members and the presiding judge, eligible participants are identified at multiple points in the system and placed in the therapeutic court program.

Community corrections case managers conduct assessments and track the progress of each offender. Based upon the treatment needs of the individual, referrals are provided to treatment interventions including community mental health, outpatient treatment, residential placement, cognitive skills instruction, AA/NA/Double Trouble support groups and drug education. Case managers maintain frequent contact with defendants and treatment providers to verify compliance. Abstinence is monitored by mandatory random drug testing throughout the duration of the program. Participants are scheduled for routine judicial reviews that integrate mental health and/or drug treatment compliance and urine screening with judicial case processing.

Therapeutic courts strategically incorporate a positive and timely reward system. Participants who abstain from drug use and meet program requirements receive positive feedback from the presiding judge and a reduction in random drug testing, judicial reviews and daily reporting. Participants who are unable to meet program requirements are returned to the traditional judicial case processing system or sentenced to prison. Offenders remain in the court programs for an average period of twelve months. Successful completion of program requirements culminates in a graduation ceremony and, in many cases, the dropping of the charge.

Post-Sentence Programs

Common eligibility criteria: Offenders who require more supervision and services than provided by probation but less than those found in prison (intermediate punishment).

Organized under the Community Corrections Act and funded by the Alabama Department of Corrections, post-sentence programs, or alternative sentencing, targets non-violent, prison-bound offenders. The purpose of these programs is to:

⁶ *Annual Report 2000: Arrestee Drug Abuse Monitoring* Washington, DC: U.S. Department of Justice, National Institute of Justice, 2003.

- Provide services that expand the options available for sentencing defendants
- Furnish punishments that allow judges the option of maintaining the offenders' residence in the community, making restitution to victims or repaying the community through community service
- Provide enhanced supervision options between traditional probation supervision and prison
- Reserve limited prison space for violent offenders by supplying options that allow non-violent offenders to remain in the community
- Establish links to existing community services
- Provide sanctions that incorporate the victim's need for restitution, the community's need for punishment and the offender's individualized need for supervision and treatment

In order to meet these objectives, designated community corrections staff design Client Specific Alternative Sentencing Plans based on the defendant's treatment needs, public safety risk, previous criminal history and personal resources. These plans integrate innovative sentencing strategies such as residential drug treatment, community service, electronic monitoring, shock sentencing and victim restitution as alternatives to incarceration. Plans are submitted to the court for review. Contracts with community-based residential and half-way facilities assist offenders in accessing treatment resources.

Community Corrections and Punishment Act of 2003

Act No. 2003-353, effective 7/30/03, implements changes in Alabama's Community Corrections Act to ensure accountability and to encourage the growth of local community corrections programs as alternatives to prison incarceration. These changes recognized that state appropriations for community corrections can be used as start-up grants for local programs as well as the operation of continuing programs and authorizes counties to establish community correction programs by passage of resolution, rather than establishing non-profit authorities. The other key initiatives in this Act are the creation of a separate community corrections division in the Department of Corrections with a full-time director and support staff and the creation of the State-County Community Partnership Fund as an identifiable fund to receive appropriations for community corrections programs, with monies appropriated to this Fund earmarked solely for community corrections. Another major provision of this Act was the appropriation of \$5.5 million for community corrections programs. Although this provision was amended out of the bill, Commission staff was given assurances by key legislators that it would be included in the General Fund Budget, which will be considered in a special session of the Legislature later this summer. As this bill traveled through the Legislature the initiative to build more community punishment alternatives began to grow, with members of Governor Bob Riley's staff working with the Department of Corrections and Department of Mental Health to develop plans for five transition centers for inmates diverted from prison or ending their term of incarceration. Perhaps, through necessity, alternative sanction programs and reentry programs are finally coming to fruition in Alabama.

The Community Corrections programs in Jefferson and Mobile Counties are two of the oldest and most comprehensive in the state providing most of the services set out above. Neither have an in-house work release center or detention center, as do some other programs, i.e. the Shelby County program and the Fayette, Lamar and Pickens County program. The following profile of participants in a community corrections program may be helpful in determining who is served in this type of alternative sentencing program. The two groups described are from the Mobile County Jail Diversion Program and the Mobile County Alternative Sentencing Program. It is noted that Mobile County Community Corrections serves as the Court Referral Officer for Mobile County.

In Mobile County Jail Diversion (county probation for misdemeanors) is a formal probationary program that provides a high level of supervision including monitoring the offender, the enforcement of court ordered probationary conditions and the opportunity for self-improvement and rehabilitation. Referrals are received from District and Circuit Court, as well as, courtesy supervision from other states.

The Alternative Sentencing Program identifies certain felony offenders who can be punished safely within the community by utilizing sentencing options that range from probation to incarceration. There are different requirements that qualify an offender for the program; felony charge, youthful offender status, prison bound, safely punishable within the community or facing probation revocation. By offering an individualized plan for offenders, the Alternative Sentencing is striving to ease prison overcrowding, decrease the rates of recidivism and lower the cost of punishment.

Mobile Community Corrections Center Offender Profile
July 2001 - July 2003
Alternative Sentencing & Jail Diversion

	Alt. Sentencing	Jail Diversion
Age of Offender		
15-20 yrs.	8%	14%
21-25 yrs.	32%	32%
26-30 yrs.	16%	19%
31-35 yrs.	11%	11%
36-40 yrs.	11%	9%
41-45 yrs.	13%	7%
46+ yrs.	9%	8%
	100%	100%
Sex		
Male	83%	69%
Female	17%	31%
History of Alcohol Abuse		
No	81%	78%
Yes	19%	22%
History of Drug Abuse		
No	8%	12%
Yes	92%	88%
Most Frequent Conviction Offenses		
Poss. Cocaine	25%	14%
Poss. Marijuana 1st	10%	10%
Credit Card -- Fraudulent Use	1%	8%
B&E Motor Vehicle	7%	7%
Theft of Property 1st	8%	5%
Theft of Property 2nd	8%	6%
Unauth. Use Motor Vehicle	<1%	6%
Rec. Stolen Prop. 1st	4%	4%
Forgery 2nd	3%	5%
Assault 2nd	4%	4%
Robbery 3rd	3%	1%
Other	27%	30%
	100%	100%

Chapter 4: Parole/Good time

Alabama's Good Time Laws and Discretionary Parole Practices Produce Uncertainty In Sentencing

In Alabama, the release date for most inmates is determined not by the judge, but rather, based on the amount of "good time" awarded and the release decisions left to the discretion of a 3-member parole board. "Good time" credits, like parole, directly affect the length of time a prisoner spends behind bars, altering the sentence handed down by the trial judge. Alabama has the distinction of having one of the most generous good time laws, with prisoners receiving two and one-half days for every day served.¹

In practice, good time credits are not "earned." The grant of credits does not depend on an inmate's participation in prison programs, work time or outstanding service, but rather, are automatically calculated upon entry into the prison system and are only denied or forfeited for bad conduct or rule violations. These credits are considered to be an entitlement and any forfeiture or denial, punishment. The average inmate serving a sentence of 15 years or less is given 243 days credit for every 365 days served (a total of 608 days per year).

The current system is a complicated four-level structure that takes into account various factors such as: the applicable earning class, disciplinary infractions, type of sentence, the crime of conviction, and whether multiple terms are being served concurrently or consecutively. The system then uses these factors to calculate sentence good time deductions.

Although the Correctional Incentive Time laws (CIT), §§ 14-9-40, et seq., applies to most inmates (those committing crimes on or after May 19, 1980), statutory good time and incentive good time statutes are still applicable to prisoners incarcerated for crimes committed prior to May 19, 1980. Incentive Good Time (IGT) is an additional one-for-one (maximum by statute is 2 days for each day served) reduction in sentence authorized for *inmates serving SGT* who exhibit exceptional behavior and are approved by the proper authorities.

Good Conduct Credit – Correctional Incentive Time

	<i>Minimum Time in Each Class</i>
Class IV- No Credit	30 days
Class III- 20 days for every 30 served	90 days
Class II - 40 days for every 30 served	180 days
Class I*- 75 days for every 30 served	Remainder of Sentence

*Inmates convicted of assault where the victim suffered the permanent loss or use or permanent partial loss or use of any bodily organ or appendage or inmates convicted of sexual abuse of a child under the age of 17 cannot be placed in Class I.

¹ Jacobs, James B., Sentencing By Prison Personnel: Good Time, 30 UCLA L. Rev. 217 (1982).

Offenders Not Entitled To Good Time Credit

- **Inmates sentenced to life imprisonment or death and inmates convicted of a Class A felony.**
- **Inmates receiving a sentence of more than 15 years in the state penitentiary or in the county jail at hard labor.**
- **Inmates serving a split sentence, during the minimum term of imprisonment.**
- **Defendants sentenced under mandatory enhancement statutes serving sentences not subject to early release provisions. § 14-9-41, *Code of Alabama* 1975.**
- **Defendants on probation.**

Sentence Served Applying Correctional Incentive Time
Automatic Elevation – No Jail Credit

Sentence	Year	Month	Day
1 Year	—	6	18
2 Years	—	11	5
3 Years	1	2	18
4 Years	1	6	—
5 Years	1	9	13
6 Years	2	—	26
7 Years	2	4	9
8 Years	2	7	22
9 Years	2	11	5
10 Years § 14-9-41(e)	3	2	18
11 Years	3	6	—
12 Years	3	9	13
13 Years	3	11	28
14 Years	4	4	9
15 Years	4	7	22
16 Years (Consecutive)	4	11	5
17 Years (Consecutive)	5	2	18
18 Years (Consecutive)	5	6	—
19 Years (Consecutive)	5	9	13
20 Years (Consecutive)	6	—	26
25 Years (Consecutive)	7	6	—
30 Years (Consecutive)	8	11	5
40 Years (Consecutive)	11	9	13
50 Years (Consecutive)	14	7	22

Parole Policies Affect Sentence Length

The time actually served on a sentence is also determined by discretionary parole consideration dates that are superimposed on “good time” credits. These dates are determined a number of different ways depending on the length of the sentence, the crime at conviction, and the number of votes required for parole.

For prisoners receiving “good time,” the first date for consideration of parole by majority vote of the Board is determined by the sentence of imprisonment imposed. An inmate *serving five years or less* is placed on the current docket. If the inmate is *serving more than 5 but less than 10 years* the approximate date for parole consideration is 12 months prior to the minimum release date; for those serving *more than 10 but less than 15 years*, approximately 24 months prior to the minimum release date; and for those serving *over 15 years*, 36 months prior to the minimum release date.

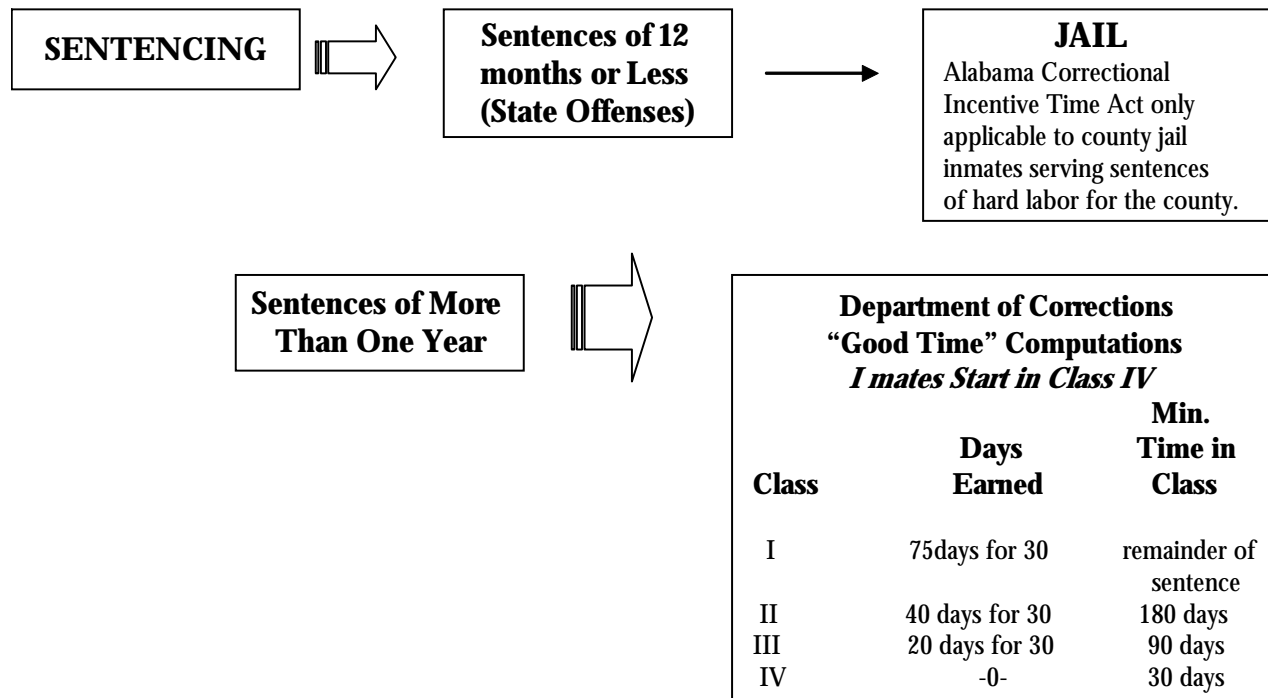
For most inmates not receiving “good time,” the parole consideration date is set at the lesser of 1/3 of the sentence or 10 years. This parole consideration date is set by a majority vote of the Parole Board and applies only to certain offenders. The Parole Board’s rules and regulations provide a different parole consideration date for serious offenders.

Serious offenders, those convicted of *murder, attempted murder, rape I, sodomy I, sexual torture, kidnapping I, or where serious physical injury occurred, robbery I, burglary I and arson I*, generally are not granted parole consideration until serving 15 years or 85% of the sentence, whichever is less. This rule is sometimes referred to as the Board’s 85% rule. Realistically it is the “15 year” rule because 15 years is the parole consideration date for any offender sentenced to 18 years or more for the listed offenses.

The Board of Paroles can set earlier dates for parole consideration by *unanimous* vote of its three members. In exercising its broad discretionary authority, the Board could parole a prisoner as early as six weeks after sentencing, delayed only by the time required for investigations and notices to be completed.

The complexities of the various parole release dates will be simplified when the Sentence Reform Act of 2003 is fully implemented. According to the provisions of the Sentencing Reform Act of 2003, Act 2003-354, a mandatory term of supervised post-incarceration release will be required for felony offenders sentenced to a term of imprisonment, in addition to the period of incarceration imposed. This recommendation is made in recognition of the fact that offenders leaving prison need a supervised reentry program to reintegrate into the free world. During the last quaddrennium, approximately 40% of Alabama inmates that were released from prison returned to the community after serving their sentence (referred to as “end of sentence” or “EOS”) with no supervision or reentry plan in place.

Description of Alabama Parole and Good Time Laws



Descretionary Parole Eligibility

Inmates Eligible for “Good Time”		Not Receiving “Good Time”	Serious Parole Eligible Offenders
<i>Sentence</i>	<i>Eligibility Date</i>	As soon as practicable after eligible for release by majority vote – 1/3 of sentence or 10 years, whichever is less.	15 years or 85% of sentence, whichever is less.
Up to 5 years	Current docket		
5-10 years	App. 12 months prior to min. release date		
10-15 years	App. 24 months prior to min. release date		
Over 15 years	App. 36 months prior to min. release date		
			* Murder, attempted murder, rape I, sodomy I, sexual torture, kidnapping I and if involving serious physical injury, arson I, robbery I, and burglary I

Statistics -- Department of Corrections/Probation and Parole

FY	DOC Prison Pop.	DOC Admis-- sions	Prob./ Parole Officers	Under Parole Sup.	Parole Granted	Parole Revoca-- tions	Under Prob. Sup.	Prob. Granted	Prob. Revoca- tions
1983			144	2350	1244	485	16192	5819	704
1984			140	2415	1289	300	17219	5193	656
1985			139	2599	1366	348	17535	5277	745
1986	11471	4722	158	3205	1784	357	17954	5416	838
1987	12483	4932	159	3698	1657	459	18714	5788	830
1988	12190	5137	180	4952	2579	451	19584	7214	962
1989	13541	6484	220	5765	2310	725	20707	7351	1117
1990	15074	7306	221	6629	2487	1021	22462	8909	1326
1991	16545	7200	216	6787	1973	857	24915	7583	1268
1992	17221	7754	213	6983	2287	883	27425	9672	1552
1993	18262	7888	220	7172	2093	765	28196	9295	1718
1994	19270	7726	221	7306	1942	860	27996	8347	1930
1995	20248	8064	222	7249	2287	1000	27349	8588	1948
1996	21481	9200	220	6609	1644	855	27442	8170	1982
1997	22243	9036	217	4631	2712	425	28033	9276	2106
1998	22670	8973	218	5423	2761	288	29375	9024	1958
1999	24736	10274	224	4988	1729	335	30516	11619	1925
2000	25873	9527	222	5069	1836	487	31204	10933	1925
2001	26728	9387	235	4772	1772	581	31348	10933	1925
2002	27656	10210	238	5195	2169	609	31752	11774	2665

Level 1	Level 2	Level 3	Level 4	Level 5	Level 6 (Targeted Intensive)
1. monitored case specific plan;	Same	Same	Same	Same	1) Same as Level I
2. 6 face-to-face contacts per month, including at least 1 home personal per month and 1 office personal per week.	Same	1 home visit every 2 months and at every change of residence. One office personal per month, one collateral contact per month or one additional personal conversation per month.	1 home visit every 6 months and at change of residence. 1 office contact per month. One collateral contact per month or one additional personal conversation per month.	1 monthly report (in person or by mail)	2) Same as Level I.
3. 1 collateral contact per week	Same	(Same as above)	(Same as above)	1 face-to-face contact every 6 months.	3) Same as Level I.
4. 1 employment visit initially and upon change of employment and one employment verification per week.	Same	1 employment verification per month.	1 employment verification per month.	Payment of monthly supervision fee unless exemptions apply.	4) Same as Level I.
5. Payment of weekly supervision fees, unless exemptions apply.	Same	Payment of monthly supervision fee unless exemptions apply.	N/A	N/A	Payment of monthly supervision fee unless exemptions apply.
6. Mandatory curfew restrictions with daily verification of compliance using electronic monitoring equipment.	Mandatory curfew restrictions with at least 1 verification of compliance per week.	N/A	Payment of monthly supervision fee unless exemptions apply.	Drug tests when indicated.	Mandatory curfew restrictions with at least 1 verification of compliance per week
7. 1 drug test when placed on Level I with 2 random tests per month if indicated; at least one month if in a substance abuse program.	N/A	One random drug test per month if indicated.	One random drug test per month if indicated.	Continuous surveillance for possible criminal activity through notifications of arrest and police contacts.	Drug test initially and 2 random tests a month if indicated.
8. Continuous surveillance for possible criminal activity through notification of arrests and police contacts.	N/A	Continuous surveillance for possible criminal activity through notifications of arrest and police contacts.	Continuous surveillance for possible criminal activity through notifications of arrest and police contacts.	(Same as above)	Continuous surveillance for possible criminal activity through notifications of arrest and police contacts.

Chapter 5: Cases

CRUEL AND UNUSUAL PUNISHMENT

Trafficking Sentence for First Offender held to be Unconstitutional as Cruel and Unusual Punishment.

Trafficking in morphine, 13A-12-231(3)(d), mandating imposition of a life without parole sentence for a first-time drug offender is unconstitutional under the 8th Amendment prohibition against cruel and unusual punishment. *Wilson v. State*, 830 So.2d 765 (Ala.Crim.App. 2001).

Execution of Mentally Retarded

The Eighth Amendment prohibits execution of mentally retarded person. *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L. Ed. 2d 335 (2002).

Hitching Post Case – No Immunity for Alabama Prison Guards

An Alabama prison inmate that was handcuffed to a hitching post by Alabama prison officials for disruptive conduct filed this § 1983 lawsuit against three guards alleging that his 8th Amendment rights were violated. Without deciding whether this action was an 8th amendment violation, the Magistrate Judge found that the guards were entitled to qualified immunity. The District Court for the Northern District of Alabama, entered summary judgment for the respondents and the Court of Appeals for the 11th Circuit affirmed.

The United States Supreme Court reversed, holding that the inmate was subjected to cruel and unusual punishment in violation of the 8th Amendment and the prison guards were not entitled to the defense of qualified immunity in light of a prior warning by the Department of Justice of the constitutional infirmity of the use of a hitching post by Alabama's Department of Corrections, DOC's regulation governing use of the hitching post and binding 11th Circuit precedent. *Hope v. Pelzer*, et al., 536 U.S. 730, 122 S.Ct. 2508, 153 L.Ed.2d 666 (S.Ct. 2002)

GUILTY PLEA

Guilty Plea - Withdrawal

Pursuant to a plea agreement that the defendant would be sentenced to 15 years imprisonment and that he could apply for probation, which the State would recommend, the defendant entered a guilty plea to first-degree rape. Through a guilty plea colloquy, the court questioned the defendant at length regarding his understanding of the plea agreement to ensure that he understood the State was promising to make a recommendation of probation, but that there was no guarantee the court would follow this recommendation and grant his request. The trial court sentenced the defendant to 15 years, as set out in the plea agreement, but postponed a decision on his probation request. Prior to the probation hearing, the defendant filed a motion to withdraw his guilty plea, which the trial court denied. Relying on *Brown v. State*, 495 So.2d 729 (Ala.Crim.App. 1986), the Court of Criminal Appeals reversed the trial court's denial of the defendant request to withdraw his guilty plea, holding that this was a bargained for sentencing recommendation which the court did not follow, denial of which resulted in reversal. *Nelson v. State*, 2002 WL 31628768 (Ala.Crim.App. 2002), certiorari denied, 2003 WL 21205837 (Ala. 2003).

Consecutive vs. Concurrent

Unless a defendant is advised that consecutive sentences might be ordered, his guilty plea is not voluntarily and knowingly entered. *Taylor v. State*, 846 So.2d 1111 (Ala.Crim.App. 2002).

Illegal Alien - No Notice of Possible Deportation Required

Rejecting the defendant's argument that his attorney was ineffective because he was not informed of the possibility of deportation, the Court of Criminal Appeals held that because deportation was not a direct consequence of the plea, the petitioner was not required to be advised of the possibility that the United States Immigration and Naturalization Service (a department over which the judge has no authority) may deport as a result of his guilty plea. *Rumpel v. State*, 847 So.2d 399 (Ala.Crim.App. 2002).

JURISDICTION

30 Day Rule

A trial court has jurisdiction to modify a sentence for 30 days after which the court cannot modify co-terminous or concurrent sentences to different types of sentencing, even if time served is the same. *Moore v. State*, 814 So.2d 308 (Ala.Crim.App. 2001)

Trial Court's Jurisdiction To Amend Sentence

In the absence of a motion for a new trial or a request to modify a sentence, filed within 30 days after sentencing, the trial court loses jurisdiction to modify a defendant's sentence at the end of the 30th day. *Ex parte Hitt*, 778 So.2d 159 (Ala. 2000); *Moore v. State*, 814 So.2d 308 (Ala.Crim.App. 2001).

In *Moore*, the Court of Criminal Appeals noted the Criminal Rules appear to extend the time for reconsideration to change sentences from consecutive to concurrent. "Rule 26.12(c) Ala.R.Crim.P. appears to give a trial court some leeway to amend a sentence order after the 30-day jurisdictional period had expired. 'Reconsideration. The court may at any time by a nunc pro tunc order provide that previously imposed consecutive sentences run concurrently.' The committee comments to Rule 26 state: 'Section (c) allows the judge discretion to, at any time, amend a sentence order to permit a sentence to run concurrently with another sentence.' However, Rule 26.12 does not authorize the trial court to amend a sentence order to change a concurrent sentence to a consecutive sentence.'" *Moore* 814 So.2d, 308, 309

Essential Elements of Offense Charged in Indictment

Failure to allege an essential element of the charged offense is a jurisdictional defect that renders the indictment void. *Ex parte Lewis*, 811 So.2d 485 (Ala. 2001)

Scienter must be alleged in an indictment charging a person with a statutory crime. *Ex parte Harper*, 594 So.2d 1181 (Ala. 1991) (holding that "knowingly" was an essential element of the offense of the unlawful distribution of a controlled substance and must be alleged in the indictment) See also *Ex parte Lewis*, 811 So. 2d 485 (Ala. 2001) and *Sullens v. State*, 2003 WL 1408529 (Ala.Crim.App. 2003).

An essential element of the crime of "receiving stolen property" is that the defendant "*intentionally* receive[d], retain[ed], or dispose[d] of stolen property," and failure include the word "*intentionally*" in front of the words "receive, retain, or dispose" made the indictment void for failure to charge an essential element of the offense that

cannot be waived. The Court noted the elements of the offense of first-degree receiving stolen property as follows: “First, a person must intend to receive, retain, or dispose of the property in question. Second, the property must be stolen. Third, a person must know, or have reasonable grounds to believe, that the property is stolen. Fourth, the property must not have been retained or disposed of with the intent to restore it to the owner. Finally, in order for the offense to be in the first-degree, the property must be valued at \$1,000 or more. For an indictment to adequately charge a defendant with the crime of first-degree receiving stolen property, the indictment must contain all six essential elements. Because it is lacking the first element, the indictment in the present case is not sufficient to charge Cogman with any offense.” *Cogman v. State*, 2003 WL 588523 (Ala.Crim.App. 2003).

JURY INVOLVEMENT IN SENTENCING

Enhancements Raising Sentence Over Maximum Punishment Authorized Require Jury Determination of Existence of Aggravating Factors

The defendant pled guilty to weapons offenses. He was sentenced to an extended term of imprisonment pursuant to New Jersey's hate crime statute. The New Jersey appellate courts affirmed, but the United States Supreme Court held that aggravating factors, other than the fact of a prior conviction, that is relied upon to enhance the punishment for a crime beyond the established statutory maximum for that offense must be submitted to a jury and proved beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L.Ed.2d 435 (S.Ct. 2000).

Pleading Must Contain Aggravating Factors Used to Enhance – But Failure to Include in Indictment Not Plain Error

The defendants were convicted of conspiracy to commit various drug offenses. They appealed and the 4th Circuit Court of Appeals affirmed the convictions, but vacated the sentences and remanded. On certiorari, the U.S. Supreme Court held that although the failure of the indictment to include any allegation regarding the quantity of drugs involved in the alleged conspiracy violated the *Apprendi* rule and thus rendered the defendants' enhanced sentences erroneous, the error did not rise to the level of plain error. Reversed and remanded. *United States v. Cotton*, 535 U.S. 625, 122 S.Ct. 1781, 152 L.Ed. 2d 860 (S.Ct. 2002).

Apprendi Not Extended to Mandatory Minimum Sentences

The Supreme Court declined to extend the rule of *Apprendi v. New Jersey*, 530 U.S. 466 (2000) to mandatory minimum sentencing schemes, holding that increases in the minimum sentence for an offense without increasing the maximum sentence may be treated as a sentencing factor rather than as an element of the offense. In *Harris* the defendant pled guilty to distributing marijuana and was convicted after a bench trial of carrying a firearm in relation to a drug trafficking offense. At the sentencing hearing, the judge found that the defendant had “brandished” the weapon and consequently sentenced the defendant to the mandatory minimum sentence. The 4th Circuit Court of Appeals affirmed, and the United States Supreme Court agreed, holding that “brandishing” a firearm is a sentencing factor rather than an element of the crime, thus the judge was permitted to make the factual determination without jury involvement.

The Court noted that the statute criminalizing carrying of a firearm in relation to a drug trafficking offense set forth a single offense, in which “brandishing” and “discharging” are mere sentencing factors to be found by the judge, rather than elements of the offense to be found by a jury.

This decision has been cited by opponents of mandatory minimum sentencing statutes as underscoring the need to end mandatory minimum sentences. Emphasizing that part of Justice Breyer's concurring opinion commenting on mandatory minimums, the Families Against Mandatory Minimums quoted the following statement in their press release: "Mandatory minimum statutes are fundamentally inconsistent with Congress' simultaneous effort to create a fair, honest, and rational sentencing system through the use of the Sentencing Guidelines. They transfer sentencing power to prosecutors, who can determine sentences through the charges they decide to bring, and who thereby have reintroduced much of the sentencing disparity that Congress created the Guidelines to eliminate. Applying *Apprendi* in this case would not, however, lead Congress to abolish or to modify such statutes, and it would take from the judge the power to make a factual determination while giving that power not to juries, but to prosecutors." *Harris v. United States*, 536 U.S. 545, 122 S.Ct. 2406, 2002 WL 1357277 (S.Ct. 2002).

Finding of Aggravating Factors in Capital Case Must be Determined By Jury

The defendant was convicted of first-degree murder, conspiracy to commit armed robbery, and armed robbery. He was sentenced to death. On appeal, the Arizona Supreme Court affirmed. The United States Supreme Court reversed, holding that the Arizona death penalty scheme improperly empowered a trial judge in a capital case to determine the presence of aggravating factors required to be present by Arizona law in order for the death penalty to be imposed. *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (S.Ct. 2002).

Jury Involvement in Sentencing – Weighing of Aggravating and Mitigating Circumstances in Death Cases Not Factual Determination For Jury Under *Ring*

In a death penalty case, determining whether the aggravating circumstances outweigh the mitigating circumstances is not a finding of fact or element of an offense that would have to be determined by the jury under the United States Supreme Court's decision in *Ring v. Arizona*, 122 S.Ct. 2428 (2002). *Ring* only requires that a jury, not the sentencing judge, make the factual determination that aggravating circumstances necessary for imposition of the death penalty exist. In this case, the jury found the existence of one aggravating circumstance – all that is required under Alabama law to sentence a defendant to death. The trial court's later determination that the murders were especially heinous, atrocious, or cruel, was found to be only a factor that had application in weighing the mitigating and aggravating circumstances. *Ex parte Waldrop*, 2002 WL 31630710 (Ala. 2002); *Lee v. State*, 2003 WL 21480428 (Ala.Crim.App. 2003).

Apprendi Decision Applied to Alabama Law

Death Penalty - Alabama Judicial Override Still Intact

The *Ring* decision holding that any fact that increased a defendant's punishment to death had to be presented to a jury and proven beyond a reasonable doubt did not invalidate the Court's earlier holding in *Harris v. State of Alabama*, 513 U.S. 504, 115 S.Ct. 1031, 130 L. Ed. 2d 1004, which upheld against constitutional attack Alabama's judicial override statute, giving the trial court ultimate sentencing authority. *Tomlin v. State*, 2002 WL 1136439 (Ala.Crim.App. 2002).

Apprendi Not Extended to Proof Prior Convictions

The decision of the United States Supreme Court in *Ring v. Arizona*, 536 U.S. 584 (S.Ct. 2002), extending *Apprendi v. New Jersey*, 530 U.S. 466 (2000), to capital sentencing, did not require proof beyond a reasonable doubt of aggravating factors of a prior conviction. *Ex Parte Smith*, 2003 WL 1145475 (Ala. 2003).

Drug Sale Enhancements Need not be Alleged in Indictment

The locale of drug sales that could result in application of the enhancement provisions of the 3-mile radius statutes does not have to be alleged in the indictment since it is not an element of the offense of distributing a controlled substance. Citing *Poole v. State*, CR 991200, 2001 WL 996300 (Ala.Crim.App. 2001), the Court of Criminal Appeals reiterated, “We do not believe that the Supreme Court intended to impose presentment and indictment requirements on the individual states’ rights to define criminal activity.” In *Poole*, the Alabama Court of Criminal Appeals held that *Apprendi* error (failure to submit fact increasing punishment, other than prior convictions, to a jury to be proved beyond a reasonable doubt, only invalidates the defendant’s sentence, not the underlying conviction. The Court refused to adopt the defendant’s position that facts elevating a sentence above the statutory maximum must be alleged in the indictment, advising that trial courts should submit 2 verdict forms to the jury – one addressing guilt on the charge (in this case, distribution of controlled substances), and the other whether the sale occurred within a three mile radius of a school and/or housing project. *Tucker v. State*, 833 So.2d 668 (Ala.Crim.App. 2001).

Enhancements Based on Prior Convictions Not Affected

In *Apprendi v. New Jersey*, 530 US 466 (2000), the United State Supreme Court held that other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. The *Apprendi* Court specifically excluded from its holding proof of prior convictions necessary to invoke the habitual felony offender act.

The defendant in this case successfully argued that the enhancement of his sentence of distributing a controlled substance by 10 years pursuant to the 3-mile radius statutes (13A-12-250 and 270) should have been submitted to the jury and proven beyond a reasonable. The court declined to adopt the position that a fact elevating a sentence above the statutory maximum must be alleged in the indictment. *Poole v. State* 2001 WL 996300 (Ala.Crim.App. 2001)

Weighing of Aggravating/Mitigating Factors

Ring and *Apprendi* do not require that a jury weigh the aggravating circumstances and the mitigating circumstances in a capital case, only that the jury determine the existence of the aggravating factors. *Lee v. State*, 2003 WL 21480428 (Ala. Crim.App. 6/27/03), on return to remand.

Apprendi Decision Not Retroactively Applied

Calloway was convicted as a habitual felony offender for unlawful distribution of a controlled substance and given a 20 year base sentence that was split by the trial court followed by 5 years on probation, with an additional 10 year imprisonment based on the enhancement provisions of §13A-12-250 and 270. The Court of Criminal Appeals held that (1) the trial court erred in splitting the defendant’s sentence since the minimum he could receive was 30 years imprisonment; (2) the sentence enhancements for unlawful sale of a controlled substance within a 3 mile radius of a school or housing project did not have to be charged in the indictment and (3) *Apprendi* does not apply retroactively to cases on collateral review, citing *Sanders v. State*, 815 So.2d 590 (Ala.Crim.App. 2001). *Calloway v. State*, 2002 WL 1144647 (Ala.Crim.App. 5/31/2002).

POST-CONVICTION REVIEW – RULE 32 PETITIONS

Rule 32.2(b) A.R.Crim.P. – Successive Petitions for Post-Conviction Review

Pursuant to Rule 32.2(b) New claims in subsequent petitions are barred as being successive unless the petitioner shows both that good cause exists why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard and failure to entertain the petition will result in a miscarriage of justice. This opinion overruled *Blount v. State*, 572 So.2d 498, to the extent that it held that a subsequent petition on different grounds was not successive unless a prior petition was decided on its merits.

Note: Rule 32.2 (a)(4) was amended by the Supreme Court by Orders dated March 22, 2002 and July 1, 2002, to expressly incorporate this holding into the rule. Other amendments were made to the rule, specifically, Rule 32.2(c) was amended to provide for a 1 year statute of limitation (previously 2 years) and subsection (d) was added to provided that claims of ineffective assistance of counsel could not be raised in a successive petition but must be raised as soon as practicable, either at trial, on direct appeal or in the first Rule 32 petition. These amendments become effective August 1, 2002, for all defendants except those in which a certificate of judgment was issued by the Court of Criminal Appeals between August 1, 2001 and August 1, 2002, in which event those defendant have until August 2003 to file a Rule 32 petition. *Whitt v. State*, 827 So.2d 869 (Ala.Crim.App. 2001).

Post-Conviction Remedy - Rule 32 ARCrP – Procedural Bar of Constitutional Claims

The defendant filed a Rule 32 petition challenging his sentence to life imprisonment without possibility of parole imposed pursuant to the Habitual Felony Offender Act. The defendant stole a bicycle from a screened porch while the owner was home and was charged with first-degree burglary, a Class A felony. He was sentenced as a habitual offender based on five prior convictions: one for first-degree receiving stolen property and four for burglary in the third degree, none of which was a Class A felony. The Alabama Supreme Court affirmed the judgments of the trial court and Court of Criminal Appeals denying post-conviction relief, holding that the petitioner's claim that his sentence was excessive and disproportionate to the crime for which he was convicted was a constitutional claim, rather than a jurisdictional claim, and was thus procedurally barred under Rule 32. Although the Court noted that the application of the habitual felony offender act in this case “has produced what many might consider a harsh result,” it stated that this issue was one that was more appropriately addressed by the Legislature. *Ex parte Sanders*, 792 So.2d 1087 (Ala. 2001).

PROBATION REVOCATION

Written Order Mandatory Prerequisite to Revocation

Rule 27.6(e) of the Alabama Rules of Criminal Procedure requires that all conditions of probation be incorporated into a court's written order and that a copy of the order be given to the probationer. This requirement is mandatory and probation cannot be revoked for violations if the probationer did not receive a written copy of the conditions or regulations of probation. Rule 27.6(e) is specific in requiring that the conditions be reduced to writing and provided to the defendant; oral instructions are insufficient to fulfill these requirements. *D.D. v. State*, 2003 WL 575089 (Ala.Crim.App. 2003).

In this case the defendant was convicted of first degree burglary and first degree theft and originally sentenced to 20 years imprisonment for each, with the sentences to run concurrently. The sentences were then suspended; a five-year “reverse-split” sentence was imposed for each conviction, with suspension conditioned on the defendant successfully completing boot camp and two years of supervised probation. Five months later the trial court

granted the defendant's application for youthful-offender status and released him on supervised probation, however, the judge failed to resentence him according to the provisions of the Youthful Offender Act (§ 15-19-6), which limits incarceration to a maximum of three years. When the defendant subsequently violated conditions of his probation, the trial court revoked his probation and reinstated his original 5-year prison sentence. The Court of Criminal Appeals reversed, holding that because the original sentence had been voided by the subsequent grant of youthful-offender status and the trial court failed to resentence the defendant as a youthful offender, every proceeding the court took, including its attempt to revoke probation was void. *Warwick v. State*, 843 So.2d 832 (Ala.Crim.App. 2002).

Probation Revocation – Sentence

It is within the sound discretion of the trial judge whether to impose the original sentence or some other disposition as a sanction for a probation violation. *Holden v. State*, 820 So.2d 158 (Ala.Crim.App. 2001); See Rule 27.6(d) Rules of Criminal Procedure.

No Credit for Time Served on Probation

A defendant whose probation is revoked is not entitled to credit on his sentence for the time served on probation. *Johnson v. State*, 778 So.2d 252 (Ala.Crim.App. 2000).

Initiation of Revocation Proceeding

State may initiate proceeding to revoke probation, even when the proceedings were not initiated until after the date probation was originally scheduled to end since probationer had not satisfactorily fulfilled the conditions of his probation or received a formal discharge from the trial court. *Sherer v. State*, 486 So.2d 1330 (Ala.Crim.App. 1986).

Increasing Split Sentence Upon Revocation

A split sentence may be imposed upon revocation of probation, provided that the time to serve does not exceed the maximum allowed (3 years or 5 years). *Phillips v. State*, 755 So.2d 63 (Ala.Crim.App. 1999); See also, *Havis v. State*, 710 So.2d 527, 528-29 (Ala.Crim.App. 1997).

On revocation of probation in which the defendant was originally sentenced to 5 years imprisonment, the sentence was suspended and the defendant was placed on probation for 5 years, the trial court had authority to “split” the defendant's original sentence and require him to serve three years in confinement without the benefit of good time or parole. *Parker v. State*, 648 So.2d 653 (Ala.Crim.App. 1994).

RESTITUTION

Interest Authorized

In a case involving the theft of over \$200,000 from the City of Decatur by a former employee, the trial court sentenced the defendant to 15 years in the penitentiary, split the sentence and ordered her to serve 48 hours in the county jail, followed by 15 years probation. In addition payment of restitution was ordered in the amount of

§200,000 plus 12% interest amortized over a 15-year period. Addressing a question of first impression, the Alabama Supreme Court held that pursuant to the provisions of the Alabama Restitution to Victims of Crimes Act (codified at §§ 15-18-65 to 78, Ala.Code 1975), a trial court can order a defendant to pay interest on an amount ordered as restitution. Although the Court held that the trial court correctly imposed the statutory 12 percent rate of interest, because the monthly restitution payments ordered were obviously beyond the defendant's financial means, the case was remanded for the court to consider the defendant's ability to pay. *Ex parte Fletcher*, 2001 WL 306916 (Ala. 2001).

RIGHT TO COUNSEL

Misdemeanant's Right to Appointed Counsel – Test is If Imprisonment Given Now or Later as a Result of Probation Revocation

This case involved a defendant, without council, who was convicted of misdemeanor assault and sentenced to 30 days in jail which the trial court suspended and placed the defendant on 2 years unsupervised probation. The United States Supreme Court held that the 6th Amendment does not permit activation of a defendant's sentence upon an indigent defendant's violation of the terms of his probation when the State did not provide him with counsel during the prosecution of the offense for which he is imprisoned.

Rejecting the State's argument that counsel should only be required, if at all, at the probation revocation stage, the Court noted that "[i]n Alabama the probation revocation hearing is an informal proceeding, at which the defendant has no right to counsel, and the court has no obligation to observe customary rules of evidence. More significant, the defendant may not challenge the validity or reliability of the underlying conviction." The argument advanced by amicus brief that Alabama (and other states) could not afford the costs resulting from the court's ruling, the Court seemed to support the expanded use of the prosecutor's pre-trial diversion programs in stating, "those jurisdictions have recourse to the option of pretrial probation, whereby the prosecutor and defendant agree to the defendant's participation in a pretrial rehabilitation program which includes conditions typical of post-trial probation, and the adjudication of guilt and imposition of sentence for the underlying offense occur only if the defendant breaches those conditions. This system reserves the appointed counsel requirement for the few cases in which incarceration proves necessary...while respecting the constitutional imperative that no person be imprisoned unless he was represented by counsel." (citations omitted).

See United States v. Perez-Marcias, 327 F.3d 384 (5th Cir. 4/2/03), in which the Fifth Circuit Court of Appeals affirmed the District Court's holding that a prior misdemeanor conviction in which the defendant was not provided council but received probation could be used to enhance his current offense to a felony. Distinguishing the facts of this case from those in *Alabama v. Shelton*, the court noted that Shelton involved a defendant who received a suspended sentence and, was thus, given a term of imprisonment, while this case involved a defendant who received a "stand-alone" sentence of probation.

Alabama v. Shelton, 122 S.Ct. 1764 (S.Ct.2002)

SPECIFIC PENALTY PROVISIONS

Escape – Misdemeanor or Felony?

Only those state inmates who are transferred from state custody to county custody with the approval of DOC can be charged with the misdemeanor offense of escape (§14-8-42) if they escape from work release while in county

custody. Inmates in county custody awaiting transfer to DOC who escape or fail to return from work release will be subject to felony escape penalties pursuant to 13A-10-33. *Conner v. State*, 840 So.2d 950 (Ala. 2002)

Section 15-22-27.1 Denying Parole To Repeat Serious Offender Not Implicitly Repealed By HFOA

Section 15-22-27.1 which provides that “[a]ny person convicted of any act, or attempt to commit the act of murder, rape, robbery or assault with a deadly weapon, the commission of which directly and proximately resulted in serious physical injury to another and the commission of which follows within five years a previous conviction of another felony, or attempt thereof, resulting in serious physical injury to another, shall upon conviction serve such sentence as may be imposed without the benefit of parole, notwithstanding any law to the contrary,” was not implicitly repealed when the Legislature enacted the Habitual Felony Offender Act. *Moore v. State*, 739 So.2d 536 (Ala.Crim.App. 1998), overruling *Goldsmith v. Alabama Board of Pardons and Paroles*, 724 So.2d 80 Ala.Crim.App. 1998).

Habitual Felony Offender Act

Pardoned Offenses Used as Enhancements

Reversing the Court of Criminal Appeals holding that six prior felony convictions for which the petitioner had received a full and unconditional pardon could be considered to enhance his subsequent conviction for robbery pursuant to the Habitual Felony Offender Act, the Alabama Supreme Court held that ***pardoned convictions cannot be used to enhance a sentence under the Habitual Felony Offender Act***. *Ex Parte Casey*, 2002 WL 254110 (Feb. 22, 2002).

Prospective Application of the Amendments to the HFOA

Defendant sought post conviction relief following amendment of the HFOA, alleging his life without parole sentence under the Act violated equal protection. The Supreme Court held that the defendant’s right to equal protection was not violated by prospective application of the Act. Noting that the Legislature properly may give only prospective operation to statutes that lessen the punishment for a particular offense to assure that penal laws will maintain their desired deterrent effect by carrying out the original prescribed punishment, the Court held that a reduction of sentences only prospectively from the date a new sentencing statute takes effect was not a denial of equal protection. *Ex parte Zimmerman*, 838 So.2d 408 (Ala. 2002).

Only Prior Convictions Apply

Convictions occurring after commission of the offense for which the defendant is being sentenced cannot be used to enhance punishment under the Habitual Felony Offender Act. *Ex parte Peterson*, 466 So.2d 984, 986 (Ala.1984); *Hamilton v. State*, 635 So.2d 911 (Ala.Crim.App. 1993); *Bridges v. State*, 563 So.2d 13 (Ala.Crim.App. 1989).

Notice to Defendant

Sentencing a defendant within 15 minutes of his receiving notice of the state’s intent to proceed under the provisions of the Habitual Felony Offender Act is unreasonable. *Ex parte Crews*, 797 So.2d 1119 (Ala. 2000).

Split Sentencing Statute

Mandatory Minimums No Longer Mandatory After Amendment of Alabama's Split Sentencing Statute For Sentences of 20 years or less

The recent amendment to Alabama's split sentencing statute (effective 5/25/01) supercedes the prohibitions against probation of the 5 year mandatory enhancement provisions in § 13A-12-250 and § 13-12-270 for the sale of drugs within 3 miles of a school or housing project and allows a trial court to suspend sentences of 20 years or less. *See also Tucker v. State*, 2001 WL 1520625 (Ala.Crim.App. 2001).

In *Soles*, the Court of Criminal Appeals held that Alabama's split sentencing statute (§ 15-18-8), as last amended, allows a trial court to suspend a sentence imposed upon application of the five year enhancement statutes for persons convicted of the unlawful sale of a controlled substance within three miles of a school or public housing project. Although the *Soles* case only involved enhancements pursuant to the 3-mile radius statutes, applying the same rationale to other enhancement statutes (firearm enhancement, domestic violence, hate crimes, DUI, enticing a child to enter a vehicle, house, etc., and drug trafficking), would apparently lead to the same conclusion because the amendment of the split sentencing statute was the latest expression of the Legislature on the subject. *Soles v. Alabama*, 820 So.2d 163 (Ala.Crim.App. 2001).

Application Discretionary

Although *Soles* held that § 15-18-8(a)(1), as amended, *allows* a trial court to suspend a sentence imposed pursuant to § 13A-12-250 or 13A-12-270, neither *Soles* nor amended § 15-18-8 requires a trial court to do so. *Moore v. State*, 2003 WL 1950015 (Ala.Crim. App. 4/25/03).

Conner was convicted of the unlawful sale of a controlled substance and sentenced as a habitual felony offender to 20 years imprisonment that was split with 3 years to serve. The trial judge enhanced the sentence pursuant to § 13A-12-250 and 13A-12-270 because the sale occurred within 3 miles of a school and housing project, with two 5-year sentences to running consecutively with the 20-year sentence and with each other.

In an opinion issued March 1, 2002 (now withdrawn), the Court of Criminal Appeals erroneously remanded the case to the trial court for resentencing to allow the trial court the opportunity to split or suspend the enhancements utilizing its discretion as noted in *Soles*. On remand the Court recognized that the defendant's original sentence was erroneous because the minimum sentence he could receive was 30 years imprisonment that could not be split. The Court noted that it had "consistently treated sentences imposed pursuant to §13A-12-250 and §13A-12-270 as enhancements to a base sentence and, thus, as part of a single aggregate sentence for an offense. *State v. Corley*," 831 So.2d 59 (Ala.Crim.App.2001), [rehearing denied 1/25/02, certiorari denied 5/22/02]. The split sentencing statute could not apply since the minimum sentence exceeded 20 years imprisonment.

As a separate issue the Court rejected the defendant's contention that the Court erred in amending the indictment to charge the enhancements. Citing *Poole v. State*, 2001 WL 996300 (Ala.Crim.App. 2001), *infra*, and *Apprendi*, the Court noted that "the location of the crime is relevant only to the sentence the defendant may receive and not to whether, in fact, the defendant committed the offense distributing a controlled substance as charged in the indictment." In *Poole*, the Court held it is not necessary to include enhancements under § 13A-12-250 and 13A-12-270 in the indictment, therefore, amending the indictment to include these enhancements was held to amount to mere surplusage. *Conner v. State*, 2002 WL 1397863 (Ala. Crim. App. 6/28/2002), On Return to Remand.

Probation Must Follow Confinement – Manner In Which Sentence Executed Invalid

In this case the Rule 32 petitioner was challenging the trial court's jurisdiction in sentencing him to 15 years imprisonment, split to serve six months in confinement. The record in the case failed to indicate whether the sentence included a probationary term to follow the six-month term of confinement. Citing the split sentence, the Court of Criminal Appeals held that "[t]he plain language of the statute indicates that a trial court can split a sentence only if the defendant is placed on probation for a definite period following the confinement portion of the split sentence." Remanding the case to the trial court for clarification, the Court held that if the original sentence did not include a probationary term to follow the confinement portion of the sentence, execution of the sentence was invalid under § 15-18-8, the split sentence statute. *Madden v. State*, 2002 WL 31151362 (Ala.Crim.App. 2002). See also, *Moore v. State*, 2003 WL 1950015 (Ala.Crim.App. 2003), recognizing that § 15-18-8 requires suspension of that portion of the split that is not actual confinement and placement of the defendant on probation. Citing *Madden* and other cases, the Court reiterated that the trial court's power to suspend, which derives from Amendment 38 of the Alabama Constitution, can only be exercised when coupled with an order of probation.

Appeal – Split Sentence

An order dismissing a defendant from "boot camp" and ordering him to serve his period of confinement in prison is a modification of the defendant's place of confinement rather than probation revocation, and is therefore, not an appealable order. *Romanick v State*, 816 So. 2d 1081 (Ala.Crim.App. 2001).

Modification of Suspended Portion of Split Prohibited – Revocation Limited

Defendant plead guilty to possession of burglary tools and two counts of theft of property in the second degree. The trial court imposed a sentence of 15 years for each conviction which was split, two to serve on each charge (to run concurrently), followed by 2 years probation and the remainder of the sentence suspended. After serving two years imprisonment and while on probation the defendant was indicted and convicted for first degree theft of property. In addition to sentencing the defendant on this new charge, the trial court revoked the defendants probation and reinstated the remaining portions of the concurrent 15 year sentences, modified the sentences, ordering that they be split and the defendant serve four years in prison on each count to run concurrent with his new prison term. The Court of Criminal Appeals held that the trial court was without jurisdiction to modify the sentence since it no longer had jurisdiction over the defendant once he was released from incarceration. The Court held " Although the trial court retained jurisdiction over the split sentences throughout Hollis's period of confinement, it no longer had jurisdiction over the sentences after he was released. Therefore, it was not within the purview of the trial court to alter or amend Hollis's original sentences. Its only sentencing option was to impose that portion of the sentence that had been suspended at the original hearing – 13 years."

In holding that the trial court's only option on revocation of probation was to reinstate the balance of the defendant's original sentence, the Court did not discuss the provision of Rule 27.6 (e), Rules of Criminal Procedure specifically authorizing the court to revoke, modify or continue the period of probation upon finding that a violation of a condition of probation had occurred, or its prior opinions in *Holden v. State*, 820 So.2d 158 (Ala.Crim.App. 2001), *Parker v. State*, 648 So.2d 653 (Ala.Crim.App. 1994), and *Havis v. State*, 710 So.2d 527 (Ala.Crim.App. 1997), in which the Court recognized that it was within the sound discretion of the trial judge whether to impose the original sentence or some other disposition as a sanction for a probation violation. *Hollis v. State*, 845 So.2d 5 (Ala.Crim.App. 2002).

Three Mile Radius Enhancements

Need Not Be Alleged in Indictment

The Supreme Court's decision in *Apprendi* [*v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L.Ed.2d 435 (S.Ct. 2000)] does not require that Alabama's 5-year sentence enhancements for selling drugs within a three-mile radius of a school or housing project enhancements (§§ 13A-12-250 and 13A-12-270) be alleged in the indictment. *Austin v. State*, 2003 WL 42263 (Ala.Crim.App. 2003).

Applicable to Conspiracies and Attempts

Sections 13A-12-250 and 13A-12-270 are applicable to convictions for the conspiracy to sell a controlled substance and the attempt to sell a controlled substance. *Skinner v. State*, 843 So.2d 820 (Ala.Crim.App. 2002).

Not Applicable to Agent of Buyer

The three-mile enhancement provisions of §§ 13A-12-250 and -270, prescribing a five-year sentence enhancement for persons convicted of an unlawful sale of a controlled substance within three miles of a school and within three miles of a housing project, do not apply to convictions for distribution of a controlled substance in violation of § 13A-12-211 unless the defendant sold or is found to have collaborated or associated with the seller to sell a controlled substance. These enhancements do not apply if the defendant acted as the agent of the buyer (procuring agent). *Williams v. State*, 706 So.2d 821 (Ala.Crim.App. 1997).

Guilty Plea – Notice of Enhancements

Unless a defendant is advised by the trial court or counsel that the enhancement provisions of §§ 13A-12-250 and 13A-12-270 would be applied to his sentence and that he could not receive probation, he has not been informed of the true and correct terms of the sentence and his guilty plea cannot be said to be knowingly given. *Smith v. State*, 2001 WL 1520624 (Ala.Crim.App. 2002).

Firearm Enhancement Statute

Whether the defendant possessed the requisite culpability for the firearm enhancement statute to apply must be determined on a case-by-case basis. *Woods v. State*, 602 So.2d 1210, 1211 (Ala.Crim.App. 1992).

The firearm sentence enhancement provision of 13A-5-6 (5), *Code of Alabama* 1975, can apply, under the facts of the case to a reckless manslaughter conviction. *Mays v. State*, 607 so.2d 347 (Ala.Crim.App. 1992).

The firearm enhancement statute can be applied to enhance a sentence for conspiring to distribute a controlled substance and can be applied to a coconspirator where one defendant possesses a firearm during the conspiracy. *Browder v. State*, 728 So.2d 1108 (Ala.1997), on remand, 728 So.2d 1113 (Ala.Crim.App.1998).

Chapter 6: Interesting Facts

The prison overcrowding crisis is real

- **Alabama prisons are operating over 200% of design capacity**
 - The Commissioner of Corrections is under competing court orders to reduce overcrowding and to take in more inmates.
 - Inmates sentenced to segregation for prison disciplinary infractions are put on waiting lists for segregation cells.
 - More than 7,400 inmates are on waiting lists for alcohol and substance abuse programs.
 - *Waiting time* for alcohol and substance abuse programs may be *six months*.
- **Alabama uses prison as a punishment option more than almost every other state**
 - Alabama has the 5th highest incarceration rate in the nation.
 - 1 out of every 165 adult Alabama residents live in prison.
 - Over the last 30 years the inmate population has increased 600% while the state population has increased only 30%.
 - For the second time in history, in 2002 Alabama prison admissions exceed 10,000 inmates.

Small shifts in sentencing practices can have an immediate and large impact

- **Opportunities available to make punishment more effective and more efficient**
 - Additional state funds of \$650,000 have been made available for local community corrections programs creating over 350 additional beds in local programs for otherwise prison bound offenders or offenders already incarcerated but eligible for community placement in FY03.
 - \$325,000 has been made available to expand community corrections into new areas of the state in FY03.
 - In the last three months Pardons and Paroles has added 28 additional supervision officers with 5 to 10 more being sought to supervise an additional 850 offenders.
 - To maintain prison space for violent offenders, some other states are shortening sentences for low-level property and drug offenses or requiring treatment as an alternative to prison sentences for low-level drug related offenses. Sentences of 9 to 36 months may be shortened by 3 to 6 months without losing effectiveness.

➤ **Assessing the Impact of Minor Changes in Split Sentencing Practices**

- Although offenders serving a split sentence do not constitute the majority of inmates in the system, minor changes in sentence lengths can have a substantial impact. For example, Alabama would have an additional 500 prison beds in five years if judges adopted the following recommendations.

Normal Sentence (in months)	New Recommended Sentence (in months)
9-12	9
13-18	12
19-24	18
25-30	24
31-36	30

- **Over 2,500 inmates are currently eligible for community corrections placement to existing programs.**

Alabama relies too heavily on prison

- Alabama is second only to Alaska in the percentage of offenders undergoing drug or alcohol rehabilitation.
- Alabama has about 48% of 28,000 inmates in substance abuse treatment programs.
 - 80 Counselors provide treatment for 12,744 offenders.
 - Waiting list for programs is over 7,400.
- One out of five new admissions is for drug possession or felony DUI.
- 98% of felony DUI offenders report a history of alcohol abuse but only 50% report prior alcohol abuse treatment.
 - 80% of drug offenders report a history of substance abuse but only 28% report a history of substance abuse treatment.

Drug Courts as an alternative

- 16 of Alabama's 67 counties have established Drug Courts.
- 15 of the established Drug Courts serve adult offenders.
- Drug Courts handle both felonies and misdemeanors but primarily felonies.
- Offenders contribute to the cost of the programs.

-
- In Jefferson County, drug court graduates are 35% less likely to be rearrested in one year than like offenders who chose not to participate.
 - Drug Courts utilize court referral officers in 9 of the 16 programs, some in conjunction with community corrections programs.

Community Corrections as an alternative

- 20 programs serving 22 Alabama counties.
- One program serves three counties (Fayette, Lamar and Pickens).
- Served 10,820 felony offenders last year (sometimes in conjunction with court referral).
- Served 14,326 misdemeanor offenders last year.
- Pre-trial release programs reduce local jail overcrowding.
- Will receive \$2,635,000 state funding to divert 1,764 otherwise prison bound offenders in FY03.

General Information: Who is in prison active inmate population

- Over 28,000 offenders.
- 73% (over 20,000) for new offenses.
- 27% probation (21%) and parole (6%) revocations, (1/2 for technical violations).
- 44 % drug and property offenders (over 12,000).
- 61% violent offenders (includes burglary and trafficking).
- Over 1/3 serving split sentences.
- 7,312 inmates are serving sentences of 5 years or less, more than 2/3 of these for property and drug offenses (6/30/03).

Alabama's investment per inmate in its Department of Corrections system is substantially less than other states.

- Alabama's prison system has the lowest annual cost per inmate in the nation.
 - Alabama spends \$9,073 per year
 - National average \$31,073.

- Alabama's annual per inmate cost is substantially lower than its neighbors

▪ North Carolina	\$28,622	▪ Tennessee	\$28,609
▪ Virginia	\$23,567	▪ Georgia	\$19,996
▪ Arkansas	\$14,016	▪ Louisiana	\$13,058
▪ South Carolina	\$12,846	▪ Mississippi	\$12,576
▪ Alabama	\$9,073		

Community based punishment is less costly and more effective for some offenders

Per day costs

Department of Corrections	\$26.07
Pardons & Paroles Transition Centers (proposed)	\$12.82
Community Corrections	\$10.33
Probation or Parole	\$ 2.27

Offenders in prison are less likely to pay restitution, court costs or supervision fees whereas community placed offenders pay both.

Community placed offenders have quicker access to alcohol and drug treatment with community based follow-up to promote successful recovery.

During 2002, 38.9% of the inmates released from prison had no community based supervision or re-entry assistance.

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